(19,652, 19,653, 19,654, 19,655, and 19,656.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 191.

HENRY F. WYMAN ET AL., APPELLANTS,

vs.

SUMNER WALLACE ET AL.

No. 192.

PETER FRENZER ET AL., APPELLANTS,

vs.

SUMNER WALLACE ET AL.

No. 193.

EDGAR M. MORSMAN, APPELLANT,

vs.

SUMNER WALLACE ET AL.

No. 194.

WILLIAM S. POPPLETON, APPELLANT,

vs.

SUMNER WALLACE ET AL.

No. 195.

GEORGE W. McCLELLAN, AS EXECUTOR, ETC., ET AL., APPELLANTS,

vs.

SUMNER WALLACE ET AL.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

	Page.
Caption	a
Transcript from United States circuit court	1
Bill of complaint	1
Note, American national bank to Union national bank, $67,000.00, December 25, 1895	3
Opinion on plea to the jurisdiction, etc.	10
Complainant's motion for appointment of James Burness as trustee in place of Thomas L. Kimball, deceased	13
Agreement between American national bank and Union national bank, December 21, 1895	15
Order appointing James Burness as trustee, etc.	17
Order granting leave to complainant to file amended bill	18
Amended bill of complaint	18
Note, American national bank to Union national bank, $67,000.00, December 23, 1895	23
Exhibit A—Agreement between American national bank and Union national bank, December 21, 1895	31
Order sustaining motions to strike amended bill, etc.	33
Order granting leave to refile the amended bill, etc.	34
Answer of Edgar M. Morsman to the amended bill	34
Agreement between American national bank and Union national bank, December 21, 1895	44
Answer of Charles C. George *et al.* to the amended bill	46
Resolution of directors of American national bank, Dec. 21, 1895	54
Answer of Elmer C. Brownlee *et al.* to the amended bill	58
Resolution of directors of American national bank, Dec. 21, 1895	65
Answer of William S. Poppleton to the amended bill	71
Note, American national bank to Union national bank, $67,000.00, December 25, 1895	74
Agreement between American national bank and Union national bank, December 21, 1895	87

Page

Answer of Caroline Carpenter *et al.* to the amended bill 93
Resolution of board of directors of American national bank, December 21, 1895..... 100
Answer of Charles W. Morton *et al.* to the amended bill..... 105
Resolution of directors of American national bank, Dec. 21, 1895.... 112
Answer of Union national bank to the amended bill 118
Note, American national bank to Union national bank, $67,000.00, December 23, 1895, due two years after date..... 118
Note, American national bank to Union national bank, $67,000.00, December 23, 1895, due three years after date 119
Replication to answers..... 121
Stipulation as to answer of George G. Wallace, etc..... 122
Order of submission..... 122
Opinion of the court as to the necessity for a sale of the assets of the American national bank..... 123
Order confirming sale of assets, etc..... 123
Order confirming final report of trustee, etc..... 124
Opinion of the court upon the merits..... 126
Decree, May 23, 1903..... 130
Testimony for complainant..... 140
Notice to take testimony 140
Caption to testimony of William Baird *et al.*..... 142
Testimony of William Baird..... 143
Henry F. Wyman..... 159
H. E. Rainey.. 183
Henry F. Wyman (recalled)..... 198
James Burness..... 198
G. W. Wattles 237
James Burness (recalled for further cross-examination). 243
G. W. Wattles (recalled)..... 247
Exhibit 1—Agreement between American national bank and Union national bank, December 21, 1895..... 250
2—Note, American national bank to Union national bank, $67,000.00, Dec. 23, 1895, due one year after date.... 252
3—Note, American national bank to Union national bank $67,000.00, Dec. 23, 1895, due two years after date.. 253
4—Note, American national bank to Union national bank, Dec. 23, 1895, $67,000.00, due three years after date. 253
6—Minutes of meeting of directors of American national bank, December 10, 1895..... 254
7—Minutes of special directors' meeting, December 21, 1895. 255
8—Minutes of regular directors' meeting, Jan'y 14, 1896.... 258
9—Minutes of annual stockholders' meeting, January 14, 1896..... 258
10—Minutes of special directors' meeting, Jan'y 17, 1896.... 261
11—Notice to stockholders of American national bank, January 17, 1896..... 262
12—Report of judges of election, January 14, 1896..... 263
13—Minutes of special directors' meeting, February 25, 1896. 264
14—Minutes of special stockholders' meeting, February 25, 1896..... 264

Page

Exhibit 15—Report of tellers, February 25, 1896 266
16—Minutes of special directors' meeting, Feb'y 27, 1896... 267
17—Letter, Henry F. Wyman, cashier, to James H. Eckels, Comptroller, April 23, 1896 268
18—Letter, James H. Eckles, Comptroller, to Henry F. Wyman, April 27, 1896..... 269
19—Proof of publication in Omaha Mercury of notice to creditors of American national bank 269
20—Proof of publication in The American Banker of notice to creditors of American national bank 270
21—Letter, James H. Eckels, Comptroller, to Henry F. Wyman, cashier, July 20, 1896..... 271
22—Acknowledgment of deposit in liquidating redemption account, May 4, 1896..... 271
23—Minutes of stockholders' annual meeting, Jan'y 8, 1895.. 272
24—Minutes of stockholders' meeting, January 12, 1897.... 274
25—Ratification by stockholders of American national bank of contract with Union national bank..... 277
27—Minutes of meeting of directors of Union national bank, August 8, 1898, authorizing assignment to Sumner Wallace 278
28—Minutes of meeting of directors of Union national bank, August 2, 1898..... 279
29—Minutes of special meeting of directors of Union national bank, April 21, 1898..... 279
30—Statement of condition of American national bank from commencement of liquidation to October 8, 1899.... 280
31—Supplemental statement of condition of American national bank from Oct. 8, 1899, to Jan'y 7, 1900 286
32—Statement of collections and expenditures made by James Burness, trustee, January 8, 1900, to October 31, 1901..... 286
33—Statement of cash collections, disbursements, etc..... 288
34—Certified copy of certificate of Henry F. Wyman, cashier, for voluntary liquidation..... 307
Certificate of notary to testimony of William Baird *et al.*..... 308
Petition for appeal and assignment of errors of Edgar M. Morsman..... 309
Supersedeas bond on appeal of Edgar M. Morsman, $3,000.00..... 311
Supersedeas bond on appeal of Edgar M. Morsman, $7,500.00 311
Praecipe of Edgar M. Morsman for transcript..... 312
Petition of Elmer C. Brownlee *et al.* for appeal..... 314
Assignment of errors of Elmer C. Brownlee *et al.*..... 316
Order allowing appeal to Elmer C. Brownlee *et al.* 323
Supersedeas bond of Morris Levy to Union national bank..... 324
Supersedeas bond of Morris Levy to Sumner Wallace..... 325
Supersedeas bond of John N. Frenzer to Union national bank..... 326
Supersedeas bond of John N. Frenzer to Sumner Wallace 327
Supersedeas bond of Peter Frenzer to Union national bank. 328
Supersedeas bond of Peter Frenzer to Sumner Wallace..... 329
Supersedeas bond of Charles C. George to Union national bank..... 330
Supersedeas bond of Charles C. George to Sumner Wallace 331

Page
Bond on appeal of George G. Wallace 332
Bond on appeal of Elmer C. Brownlee 335
Bond on appeal of Albert U. Wyman 334
Bond on appeal of Henry F. Wyman 335
Bond on appeal of Howard B. Smith 336
Justification of E. R. Hume as surety on bond of George G. Wallace 337
Justification of Jos. P. Frenzer as surety on bonds of Peter Frenzer *et al.* .. 337
Justification of Herman Cohn as surety on bond of Morris Levy 338
Justification of Randall K. Brown as surety on bonds of Albert U. Wyman *et al.* 339
Justification of Jacob Kopp as surety on bond of Elmer C. Brownlee 339
Præcipe for transcript on appeal of Elmer C. Brownlee *et al.* 340
Petition for appeal and assignment of errors of William S. Poppleton 342
Supersedeas bond of William S. Poppleton to Sumner Wallace 344
Supersedeas bond of William S. Poppleton to Union national bank 345
Præcipe for transcript on appeal of William S. Poppleton 346
Assignment of errors of Charles W. Morton *et al.* 348
Petition of Charles W. Morton *et al.* for appeal 354
Order allowing appeal to Charles W. Morton *et al.* 355
Power of attorney, George Morton to Charles W. Morton 356
Bond on appeal of George Morton to Sumner Wallace 357
Bond to Union national bank on appeal of George Morton 358
Bond to Sumner Wallace on appeal of Mary E. Morton 359
Bond to Union national bank on appeal of Mary E. Morton 360
Bond to Sumner Wallace on appeal of James H. Morton 361
Bond to Union national bank on appeal of James H. Morton 362
Bond to Sumner Wallace on appeal of Chas. W. Morton 363
Bond to Union national bank on appeal to Chas. W. Morton 364
Justification of James Morton as surety on bonds of George Morton *et al.* .. 365
Præcipe for transcript on appeals of Charles W. Morton *et al.* 366
Motion to revive cause as to defendant Robert H. McClellan 367
Order of revivor in name of George W. McClellan as executor 368
Assignment of errors of McCague Investment Company *et al.* 369
Petition of McCague Investment Company *et al.* for appeal 373
Order allowing appeal to McCague Investment Company *et al.* 374
Bond to Sumner Wallace on appeal of McCague Investment Company *et al.* 375
Bond to Union national bank on appeal of McCague Investment Company *et al.* 377
Præcipe for transcript on appeal of McCague Investment Company *et al.* .. 378
Clerk's certificate to transcript 380
Appearance for appellants in cause No. 1954 382
Appearance for appellees in cause No. 1954 382
Appearance for appellants in cause No. 1955 383
Appearance for appellees in cause No. 1955 383
Appearance for appellant in cause No. 1956 383
Appearance for appellees in cause No. 1956 384
Appearance for appellant in cause No. 1957 384
Appearance for appellees in cause No. 1957 385
Appearance for appellants in cause No. 1959 386
Appearance for appellees in cause No. 1959 386

Page
Stipulation for submission of cause No. 1959 387
Argument commenced in causes Nos. 1954, 1955, 1956, 1957, and 1959 387
Order of submission of causes Nos. 1954, 1955, 1956, and 1957 389
Order of submission of cause No. 1959 390
Opinion in causes Nos. 1954, 1955, 1956, 1957, 1958, and 1959 391
Decree in cause No. 1954 400
Petition of Henry F. Wyman *et al.* for appeal in cause No. 1954 401
Assignment of errors by Henry F. Wyman *et al.* in cause No. 1954 402
Appeal bond of Henry F. Wyman to Sumner Wallace *et al.* in cause No. 1954 404
Justification of surety on appeal bond of Henry F. Wyman to Sumner Wallace *et al.* in cause No. 1954 405
Supersedeas bond of Morris Levy to Sumner Wallace in cause No. 1954 406
Supersedeas bond of Morris Levy to Union national bank in cause No. 1954 407
Order allowing appeal to Henry F. Wyman *et al.* in cause No. 1954 408
Citation and marshal's return on appeal of Henry F. Wyman *et al.* in cause No. 1954 409
Decree in cause No. 1955 410
Petition of Peter Frenzer *et al.* for appeal in cause No. 1955 411
Assignment or errors by Peter Frenzer *et al.* in cause No. 1955 412
Supersedeas bond of Peter Frenzer to Sumner Wallace in cause No. 1955 414
Supersedeas bond of Peter Frenzer to Union national bank in cause No. 1955 415
Justification of surety on bonds of Peter Frenzer to Sumner Wallace *et al.* in cause No. 1955 416
Appeal bond of George G. Wallace to Sumner Wallace *et al.* in cause No. 1955 417
Justification of surety on bond of George G. Wallace to Sumner Wallace *et al.* in cause No. 1955 418
Appeal bond of Howard B. Smith to Sumner Wallace *et al.* in cause No. 1955 419
Order allowing appeal to Peter Frenzer *et al.* in cause No. 1955 420
Citation and marshal's return on appeal of Peter Frenzer *et al.* in cause No. 1955 420
Decree in cause No. 1956 421
Petition for allowance of appeal and assignment of errors by Edgar M. Morsman in cause No. 1956 422
Supersedeas bond of Edgar M. Morsman to Sumner Wallace in cause No. 1956 424
Supersedeas bond of Edgar M. Morsman to Union national bank in cause No. 1956 425
Order allowing appeal to Edgar M. Morsman in cause No. 1956 426
Citation and acknowledgment of service on appeal of Edgar M. Morsman in cause No. 1956 427
Decree in cause No. 1957 427
Petition for allowance of appeal by William S. Poppleton in cause No. 1957 428
Assignment of errors by William S. Poppleton in cause No. 1957 430
Supersedeas bond of William S. Poppleton to Sumner Wallace in cause No. 1957 431
Supersedeas bond of William S. Poppleton to Union national bank in cause No. 1957 432
Order allowing appeal to William S. Poppleton in cause No. 1957 433

Page
Citation and acceptance of service on appeal of William S. Poppleton in cause No. 1957 434
Decree in cause No. 1959 435
Suggestion of death and stipulation for order of revivor as to J. H. Hawkins, deceased, in cause No. 1959 436
Order reviving cause as to J. H. Hawkins, deceased, in cause No. 1959 437
Petition for allowance of appeal by George W. McClellan as executor, etc., *et al.* in cause No. 1959 438
Assignment of errors by George W. McClellan as executor, etc., *et al.* in cause No. 1959 440
Appeal bond of George W. McClellan as executor, etc., *et al.* to Sumner Wallace *et al.* in cause No. 1959 442
Order allowing appeal to George W. McClellan as executor, etc., *et al.* in cause No. 1959 444
Citation and acceptance of service on appeal of George W. McClellan as executor, etc., *et al.* in cause No. 1959 445
Clerk's certificate to transcript 445

Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the December term, 1904, of said court, begun and held at the United States court house in the city of St. Louis, Missouri, on the first Monday in December, to-wit: the fifth day of December, A. D. 1904, before the Honorable Walter H. Sanford, Honorable Amos M. Thayer and Honorable William C. Hook, circuit judges.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals
for the Eighth Circuit.

Be it remembered, that heretofore, to-wit: on the twentieth day of July, A. D. 1903, a transcript of record, in pursuance of appeals allowed by the circuit court of the United States for the district of Nebraska, in a certain cause in said court, wherein Sumner Wallace was complainant and The American National Bank of Omaha, Nebraska, and others, were respondents, was filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, which said appeals were entitled, docketed and numbered as follows, viz:

No. 1954. Charles C. George, *et al.*, appellants, *vs.* Sumner Wallace and Union National Bank of Omaha, Nebraska, appellees.

No. 1955. Elmer C. Brownlee, *et al.*, appellants, *vs.* Sumner Wallace and Union National Bank of Omaha, Nebraska, appellees.

No. 1956. Edgar M. Morsman, appellant, *vs.* Sumner Wallace and Union National Bank of Omaha, Nebraska, appellees.

No. 1957. William S. Poppleton, appellant, *vs.* Sumner Wallace and Union National Bank of Omaha, Nebraska, appellees.

No. 1958. Charles W. Morton, *et al.*, appellants, *vs.* Sumner Wallace and Union National Bank of Omaha, Nebraska, appellees, and

No. 1959. McCague Investment Company, *et al.*, appellants, *vs.* Sumner Wallace and Union National Bank of Omaha, Nebraska.

And which said transcript of record is in the words and figures following, to-wit:

1 Pleas, Before the Honorable William H. Munger, Judge of the District Court of the United States for the District of Nebraska, and sitting in the Circuit Court of the United States for the District of Nebraska, within the Eighth Judicial Circuit, at the May 1903 Term thereof.

Be It Remembered, That on the 18th day of August, 1898, Bill of Complaint was filed in the Clerk's office of said Circuit Court, which said Bill of Complaint is in words and figures following, to-wit:

To the Honorable the Judges of the Circuit Court of the United States in and for the District of Nebraska.

Comes now Sumner Wallace, a resident and citizen of the State of New Hampshire, and brings this his bill of complaint against American National Bank, a corporation, The McCague Investment Company, a corporation, Thomas H. McCague, Alex. G. Charlton, Elmer C. Brownlee, Alfred R. Dufrene, Edgar M. Morsman, Philip Mergin, George G. Wallace, William S. Poppleton, John S. King, William Wallace, Charles F. Manderson, Anna C. Crowell, Charles C. George, Robert H. McClellan, Peter Frenzer, John N. Frenzer, Charles H. Walworth, Frank W. Wessells, Frank Graham, James H. McCulloch, John P. Charlton, C. W. Morton, Royal Wilson, Jacob Wead, James J. Brown, Jr., James J. Woodward, Viola Coffin, Howard B. Smith, Edward G. Glenn, Emily J. Robinson, James H. Morton, George Morton, Mary E. Morton, William Wilson, Henry F. Wyman, Albert U. Wyman, F. R. McConnell, Trustee, John Speer, John E. Patrick, R. L. Brownlee, Caroline Carpenter, William
2 C. Beer, Marcus C. Acheson, George Marples, Arthur H. Flack, Meade C. Williams, John H. Conrad, T. R. Neal, J. H. Hawkins, William Baird, The Manufacturers National Bank of Boston, Mass., a corporation, John L. McCague, Morris Levy, National Bank Building Company of America, a corporation, John L. McCague, Thomas H. McCague, William L. McCague, and Alex. G. Charlton, partners doing business under the firm name and style of McCague Bros., Rufus B. Bullock, Thomas L. Kimball, Thos. L. Kimball, Trustee, Alex. G. Charlton, Secretary, Smauel Blackwell, and the Union National Bank of Omaha, Nebraska, and thereupon your orator complains and says:

That the American National Bank and the Union National Bank are corporations organized under and by virtue of the banking laws of the United States, for the purpose of doing business in the City of Omaha, Douglas County, Nebraska, and within the jurisdiction of the Circuit Court of the United States within and for the District of Nebraska as a national bank; that the McCague Investment Company is a corporation organized under and by virtue of the laws of the State of Nebraska, and a citizen and resident of the State of Nebraska; that the National Bank Building Company of America is a corporation organized under and by virtue of the laws of the State of Nebraska and a resident and citizen of said State, and doing business in the City of Omaha, Douglas County, Nebraska, and within the jurisdiction of this Court; that the defendant, William Wallace, is a citizen and resident of the State of Ohio; that the defendant, Anna C. Crowell, is a citizen and resident of the District of Columbia; that the defendant, Robert H. McClellan, is a citizen and resident of the State of Illinois; that the defendant, Royal Wilson is a citizen and resident of the State of Massachusetts; that the defendant,

3 William Wilson, is a citizen and resident of the State of New York; that the defendant, Jacob Wead is a citizen and resident of the State of Illinois; that the defendant, John Spear, is a citizen and resident of the State of Illinois; that the defendant, R. L. Brownlee, is a citizen and resident of the State of Ohio; that the defendant, Caroline Carpenter, is a citizen and resident of the State of Massachusetts; that the defendant, Arthur H. Flack, is a citizen and resident of the State of New York; that the defendant, Meade C. Williams, is a citizen and resident of the State of Illinois; that the defendant, J. H. Hawkins, is a citizen and resident of the State of Ohio; that the Manufacturers National Bank is a corporation organized under and by virtue of the Banking laws of the United States, for the purpose of doing business as a national bank; and is a citizen and resident of the State of Massachusetts; that Samuel Blackwell is a citizen and resident of the State of New York; that Thomas H. McCague, Alex G. Charlton, Elmer C. Brownlee, Alfred R. Dufrene, Edgar M. Morsman, Philip Mergin, George G. Wallace, William S. Poppleton, John S. King, Charles F. Manderson, Charles C. George, Peter Frenzer, John N. Frenzer, Charles H. Walworth, Frank W. Wessells, Frank Graham, James H. McCulloch, John P. Charlton, C. W. Morton, James J. Brown, Jr., James J. Woodward, Viola Coffin, Howard B. Smith, Edward G. Glenn, Emily J. Robinson, James H. Morton, George Morton, Mary E. Morton, Henry F. Wyman, Albert U. Wyman, F. R. McConnell, Trustee, John E. Patrick, William C. Beer, Marcus C. Acheson, George Mar-

ples, James H. Conrad, T. R. Neal, William Baird, John L. McCague, Morris Levy and John L. McCague, William L. McCague, Thomas H. McCague and Alex. G. Charlton, partners doing business under the firm name and style of McCague Bros., Rufus B. Bullock, Thomas L. Kimball and Alex. G. Charlton, Secretary, are each and all of them citizens and residents of the State of Nebraska.

4 And your orator further complaining says, that on the 25th day of December, 1895, the said defendant the American National Bank, for a valuable consideration, made, executed and delivered to the Union National Bank, a corporation duly organized and existing under and by virtue of the banking laws of the United States, and doing business in the City of Omaha, Nebraska, its certain promissory note for the sum of Sixty-seven Thousand Dollars ($67,000.00) a copy of which note, with all endorsements thereon, is as follows:

"$67,000.00 Omaha, Nebr., Dec. 25, 1895.

One year after date for value received, we promise to pay to the Union National Bank Sixty-seven Thousand Dollars at its Banking Office in Omaha, Neb., with interest at 6 per cent per annum from date payable quarterly until paid.

THE AMERICAN NATIONAL BANK,
By Thos. L. Kimball, President.

Attest:
Henry F. Wyman, Cas".

Indorsed:	Paid Jan. 27, 1896.....	$3,000.00
	Paid Feb. 29, 1896.....	3,000.00
	Paid Mar. 10, 1896.....	1,000.00
	Int. paid to Mar. 23, 1896.....	
	Paid May 5, 1896.....	6,000.00
	Paid May 16, 1896.....	4,000.00
	Int. paid to June 23, 1896....	
	Int. paid to Mar. 23, 1897.....	
	Paid Mch. 23, 1897.....	8,235.00
	Paid May 12, 1897.....	4,000.00

Pay Sumner Wallace or order without recourse,

UNION NATIONAL BANK,
By J. W. Thomas, its Cashier,

Aug. 8, 1898.

And your orator further complaining says, that he is now the legal owner and holder of said note, having purchased the same from the said Union National Bank, and is entitled to the proceeds thereof.

That no part of said note has been paid, except the following amounts, which are endorsed thereon, to-wit:

5 $3,000.00 paid January 27th, 1896;
3,000.00 paid February 29th, 1896;
1,000.00 paid March 10th, 1896;
Interest paid to March 23rd, 1896;
6,000.00 paid May 5th, 1896;
4,000.00 paid May 16th, 1896;
Interest paid to June 23rd, 1896;
Interest paid to March 23rd, 1897;
8,235.00 paid March 23rd, 1897;
4,000.00 paid May 12th, 1897;

And that there is now due and owing on said note to your orator from the American National Bank and the stockholders thereof the sum of Forty one thousand one hundred & seventy-nine & 76-100 Dollars.

And your orator further shows to this Court that the defendant the Union National Bank is a corporation doing business in Omaha, Douglas County, Nebraska, and within the jurisdiction of this honorable Court, under and by virtue of the laws of the United States relating to National Banks, and that said Union National Bank is as your orator is informed and believes also a creditor of said American National Bank.

And your orator further complaining says that at the time of the giving of the note described herein, the said American National Bank delivered to Thomas L. Kimball, as trustee, certain notes and property as security to the notes sued on herein and other notes given to the said Union National Bank at the same time, and that said trustee was to collect said security and apply the proceeds thereof to the payment of said notes. That your orator has not a list or description of said security and is unable to give to the Court an accurate and full description of the same, but alleges that your orator together with said Union National Bank, if it still be the owner of the other notes given by the said American National Bank, has a first lien upon said security and entitled to have the same sold and the proceeds applied toward the payment of his said note
6 in so far as the same will apply, and that the said Trustee is made a party hereto in order that he may make a full and complete statement to this honorable Court as to the security still held by him, so that said security and any other assets of said bank may be first ordered sold and the proceeds applied toward the payment of the claim of your orator and said Union National Bank, if said bank proves its claim herein, and to the end that this Honorable Court may be able to make

the proper and necessary assessment against the stockholders of the said American National Bank as hereinafter set out, requested and prayed; but your orator shows to the Court that the security so held is and will be wholly insufficient to pay the amount of indebtedness for which the same is held and that the total assets of said bank are wholly insufficient to pay the indebtedness of said bank.

And your orator further complaining says, that the said respondent, the American National Bank, on the 14th day of January, 1896, went into voluntary liquidation under the provisions of Section 5220 of the Revised Statutes of the United States, and that since said time the said corporation, the American National Bank, has not done any banking business except what may have been necessary in looking towards the closing up of its business.

And your orator further complaining says, that he is a creditor of the said American National Bank, and that he brings this action on behalf of himself and all the other creditors of the said American National Bank against the said American National Bank and the shareholders thereof.

And your orator further says that all of the respondents named in this bill were shareholders of the said Ameri-
7 can National Bank at the time that it went into liquidation, as hereinbefore set out.

That the said American National Bank was capitalized for the sum of Two Hundred Thousand Dollars ($200,000.00) divided into shares of One Hundred Dollars ($100.00) each, making in all Two Thousand (2,000) shares of stock issued by the said Bank.

That your orator has made defendants in this action all of the shareholders of the said American National Bank, in so far as your orator has been able to ascertain the names thereof.

That the respondents named herein, at the time said American National Bank went into voluntary liquidation, as hereinbefore set out, were the owners and holders of the number of shares set opposite their names, as hereinafter specified, to-wit:

Thomas H. McCague	10	shares,
Alex. G. Charlton	9	"
Elmer C. Brownlee	10	"
Alfred R. Dufrene	75	"
Edgar M. Morsman	75	"
Philip Mergin	7½	"
George G. Wallace	75	"

	William S. Poppleton	56¼	"
	John S. King	2	"
	William Wallace	20	"
	Chas. F. Manderson	10	"
	Anna C. Crowell	9 3-4	shares.
	Chas. C. George	15	"
	R. H. McClellan	50	"
	Peter Frenzer	15	"
	John N. Frenzer	5	"
	Chas. H. Walworth	22½	"
	Frank W. Wessells	3 3-4	"
	Frank Graham	3 3-4	"
	James H. McCulloch	25	"
	John P. Charlton	7½	"
	C. W. Morton	6	"
	Royal Wilson	10	"
	Jacob Wead	7½	"
	James J. Brown, Jr	5	"
	James J. Woodward	2½	"
	Viola Coffin	7½	"
	Howard B. Smith	50	"
	Edward G. Glenn	5	"
8	Emily J. Robinson	1½	shares.
	James H. Morton	2	"
	George Morton	1	"
	Mary E. Morton	1	"
	William Wilson	11¼	"
	Henry F. Wyman	58¼	"
	A. U. Wyman	10	"
	F. R. McConnell, Trustee	5	"
	John Speer	10	"
	John E. Patrick	15	"
	R. L. Brownlee	25	"
	Miss Caroline Carpenter	18	"
	W. C. Beer	6	"
	Marcus C. Acheson	15	"
	George Marples	15	"
	Arthur H. Flack	5	"
	Meade C. Williams	11¼	"
	James H. Conrad	10	"
	T. R. Neal	10	"
	J. H. Hawkins	25	"
	William Baird	10	"
	The Manufacturers National Bank	25	"
	John L. McCague	287	"
	Morris Levy	50	"

National Bank Bldg., Co., of America	615	"
McCague Bros.	50	"
Rufus B. Bullock	22½	"
Thos. L. Kimball	20	"
Alex. G. Charlton, Secretary	20	"
Samuel Blackwell	50	"

That the number of shares above set out opposite the name of Alex. G. Charlton, Secretary, to-wit: twenty (20) shares, have been at all times since the placing of said shares in the name of said Alex. G. Charlton, Secretary, and still are owned by the said defendant, McCague Investment Company, and that the said defendant, McCague Investment Company, is liable upon any assessment which may be made upon said shares of stock.

That at the time the said American National Bank, respondent, went into voluntary liquidation it had become and was wholly insolvent and unable to pay its creditors, and that
9 the said American National Bank has ever since remained and still is wholly insolvent and unable to pay its creditors.

That by reason of the insolvency of said American National Bank, and its inability to meet its obligations this action is brought against the said American National Bank and its stockholders jointly under and through the authority granted by the laws of the United States relating to banking.

That under and by virtue of the banking laws of the United States each and every of said shareholders is held individually responsible equally and ratably, and not one for another, for all contracts, debts and engagements of the said American National Bank to the extent of the amount of his, her or its stock therein, at the par value thereof, in addition to the amount invested in such shares, and that each and every of the stockholders of the said American National Bank, and each and every of the respondents named herein as stockholders, are liable for the payment of the claim of your orator and of the claims of all other creditors of said American National Bank, to the amount of stock so held by said respondent.

And your orator further says that this action is brought by your orator for and on behalf of himself and all other creditors of said American National Bank, in order that this Honorable Court may ascertain who the creditors of said American National Bank are, and the total amount of the indebtedness of said Bank, and may further ascertain the amount of assessment necessary to be made against the shareholders of said American National Bank in order to pay said

indebtedness, and that such assessments as may be necessary may be made by this Honorable Court, and that by its decree each and all of said shareholders may be required to pay into this Court the amount so found due, and that the amount
10 so found due from each of said shareholders may be and become a judgment in this action against such shareholders.

Forasmuch, therefore, as your orator can have no adequate relief, except in this Court, to the end therefore that the defendants may, if they can, show why your orator should not have the relief prayed, and may make a full disclosure and discovery of the matters aforesaid, according to the best and utmost of their knowledge, remembrance and belief, full, true, direct and perfect answer make to the matters hereinbefore stated or charged, but not under oath (an answer under oath being hereby expressly waived) your orator prays that it may be determined and ascertained in this action the amount due to your orator upon the note hereinbefore set out; and that it may further ascertain who the creditors of the said American National Bank are, and the amount of indebtedness due to your orator, and to each and every of the creditors of the said Bank, and that this Court may find, adjudge and decree the total indebtedness of the said American National Bank, and the names of all creditors thereof, together with the amounts due to each; and that this Court may further ascertain, adjudge and decree the names of the stockholders of the said American National Bank, the amount of stock held by each of them, and may make due and proper estimate against the owners and holders of said stock, in order to meet the amount of indebtedness of the said American National Bank; and may further decree and adjudge that each of said shareholders shall pay into this Court, to the use and benefit of said creditors as hereinbefore set out, the amount so found due from such shareholder under such assessment as may be made, and that the amount so found due from each of said shareholders
11 shall be and remain a judgment against said shareholder until the same shall be paid or otherwise discharged according to law.

And your orator further prays that the said defendant Thomas L. Kimball, Trustee, be required to make full and complete report to this Honorable Court of all assets of the American National Bank still in his hands and held as security for the claim of your orator and any other of the creditors of said bank and that by order of this Court all of said assets may be sold and the proceeds thereof applied toward the payment of the indebtedness so secured as by law and the agree-

ment of said parties they should, and to the further end that this Honorable Court may make due and proper assessment upon the stock and stockholders of said bank as hereinbefore prayed.

And may it please your Honors to grant unto your orator its most gracious writ of subpoena of the United States of America, directed to the said American National Bank, McCague Investment Company, Thomas H. McCague, Alex. G. Charlton, Elmer C. Brownlee, Alfred R. Dufrene, Edgar M. Morsman, Philip Mergin, George G. Wallace, William S. Poppleton, John S. King, William Wallace, Charles F. Manderson, Anna C. Crowell, Charles C. George, Robert H. McClelian, Peter Frenzer, John N. Frenzer, Charles H. Walworth, Frank W. Wessells, Frank Graham, James H. McCulloch, John P. Charlton, C. W. Morton, Royal Wilson, Jacob Wead, James J. Brown, Jr., James J. Woodward, Viola Coffin, Howard B. Smith, Edward G. Glenn, Emily J. Robinson, James H. Morton, George Morton, Mary E. Morton, William Wilson, Henry F. Wyman Albert U. Wyman, F. R. McConnell, Trustee, John Speer, John E. Patrick, R. L. Brownlee, Caroline Carpenter, W. C. Beer, Marcus C. Acheson, George Marples, Arthur H. Flack, Meade C. Williams, James H. Conrad, T. R. Neal, J. H. Hawkins, William Baird, The Manufacturers National
12 Bank, John L. McCague, Morris Levy, National Bank Building Company of America, John L. McCague, Thos. H. McCague, William L. McCague & Alex. G. Charlton, partners as McCague Bros., Rufus B. Bullock, Thomas L. Kimball, Thomas L. Kimball, Trustee, Alex. G. Charlton, Secretary, Samuel Blackwell, and the Union National Bank of Omaha, commanding them on a day certain, to appear and answer this bill of complaint, and to abide and perform such other order and decree in the premises as to the Court shall seem proper and required by the practice of equity and good conscience and your orator will ever pray

R. S. Hall,
Of Counsel.

HALL & McCULLOCH,
Attorneys for Complainant.

United States of America,
District of Nebraska—ss.

J. H. McCulloch being first duly sworn deposes and says, that he is attorney for the above named complainant, who is a non-resident and absent from the State of Nebraska; that affiant has read the foregoing bill of complaint and knows the contents thereof; that the said bill is true of his own knowledge,

except as to those matters which are therein stated to be on his information and belief, and as to those he believes it to be true.

J. H. McCULLOCH.

Subscribed in my presence and sworn to before me this 18th day of August, 1898.

ELLERY H. WESTERFIELD,
[Seal] Notary Public.
Commission expires Aug. 25, 1899.

Indorsed: Filed Aug. 18, 1898. Oscar B. Hillis, Clerk.

13 Thereupon afterwards, to-wit: On the 29th day of September 1899, Memoranda Opinion was filed in said case, within said Opinion is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

Sumner Wallace, Plaintiff,
v. No. 261 "T".
The American National Bank, et al., Defendants.

Memoranda Decision.

Munger, Judge.

As I view the case made by the bill, it seeks two objects: first, to enforce the lien of the plaintiff upon certain collateral securities deposited by the American National Bank with Thomas L. Kimball as trustee; second, to enforce the statutory liability of the stockholders of the American National Bank in pursuance of the provisions of Section 2 of the Act of June 30, 1876, First Sup. Revised Statutes.

To plaintiff's bill answers have been filed by a portion of the defendants, demurrers by other defendants, and a plea to the jurisdiction on the part of the Manufacturers National Bank of Boston, Massachusetts.

The plea to the jurisdiction will first be considered. This plea is based wholly and solely upon the fact that it is a resident and citizen of the State of Massachusetts, that it is exempt from suit in any other district than that of its residence, under the provisions of the judiciary act of 1887, as amended in 1888, which provides:

14 "And no civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is

an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suits shall be brought only in the district of the residence of either the plaintiff or defendant."

If this provision of the general judiciary act is applicable in this case then the plea should be sustained and the action dismissed as to the Manufacturers National Bank. The proceeding against the Manufacturers National Bank is because of its being a stockholder in said American National Bank, and is brought under the provisions of Section 2 of the Act of 1876, before referred to, which provides an action of this character against stockholders shall be brought in a court of the United States having original jurisdiction in equity for the district in which such association may have been located or established. This is a statute conferring special jurisdiction in special cases. Prior to the passage of the Act of 1876 I know of no law which would authorize a creditor to institute a suit against the stockholder of a national bank for their liability until after the assets of the bank had been exhausted. This Act of 1876, if I read and interpret it correctly, authorizes the bringing of the suit therein mentioned immediately upon the bank going into liquidation, without reference to the fact of the solvency or insolvency of the bank. Such right of action not having previously existed, only exists by virtue of this statute, and is only authorized to be brought in the courts of the United States for the District in which the banking association was located or established, it seems clear to my mind that it is a statute conferring upon the United States courts special jurisdiction, that the right of action provided for in Section 2 cannot be maintained in a state court. Such being the
15 case, I am of the opinion that the general judiciary act of 1887-8 had reference to that class of cases in which the state and federal courts had concurrent jurisdiction, and that the act of 1887-8 did not repeal Section 2 of the Act of 1876. This view, I think, is fully sustained in Van Patten v. C. M. & St. P. Ry. Co., 74 Fed. 981; U. S. v. Mooney, 116 U. S. 104.

It follows that the plea to the jurisdiction, filed by the Manufacturers National Bank must be overruled.

As to the demurrers interposed by the several defendants, those filed on behalf of Frank Graham, James I. Woodward, and T. R. Neal can not be considered, not being in conformity with Equity Rule 31.

The Demurrer of the American National Bank must be sustained for the reason, as stated, it is a party only for the pur-

pose of having the amount of plaintiff's claim adjudicated and its lien upon the securities mentioned enforced. Suit against it is not maintainable under Section 2 of the Act of 1876. Neither is it a suit, as I view it, to wind up the affairs of a national bank. Being then a suit only, so far as the American National Bank being a proper party, to enforce the lien mentioned, jurisdiction of this court can not be sustained for the reason that it does not arise under any law of the United States and the citizenship of the parties is not such as to give this court jurisdiction, plaintiff being the assignee of a mere chose in action, its assignor, the Union National Bank, being a citizen of the same state as the American National Bank.

The other demurrers are based chiefly upon the proposition first; that complainant is not a judgment creditor; second, that the bill of complaint is indefinite and uncertain in certain respects specified.

16 The statute of June 30, 1876, under which the action is brought, does not, in my judgment, require the creditor instituting the action to be a judgment creditor as is usually required in the ordinary creditor's bill. The object and purpose of requiring in the ordinary creditor's bill, that it shall be brought by a judgment creditor is to show that an adequate remedy does not exist at law. There are no objections, however, which occur to my mind which prevent Congress from providing, as in this case, that the stockholders shall be immediately liable upon their voluntarily going into liquidation without reference to whether or not the banking association is solvent or insolvent. The language of the section of the statute is plain and unambiguous. It provides that when a banking association, without reference to whether it is solvent or insolvent goes into liquidation, an action may be brought immediately by one or more creditors on behalf of all the creditors, to enforce the stockholders' liability. This liability being one created by statute, it necessarily follows that the legislative body creating the liability may also provide when and the manner in which such liability may be enforced. So Congress, in this section, has said that the liability may be enforced immedately upon the association by vote of its stockholders go into voluntary liquidation, and this without reference to whether or not the association is solvent or insolvent. It provides also that it may be brought by any creditor, not judgment creditor, but any creditor, on behalf of himself and all other creditors. The principle announced by the Supreme Court in Case v. Beauregard, 101 U. S., 688, in my judgment is clearly applicable here as showing that the action may be maintained

by a general creditor and is not limited to one who has first reduced his claim to judgment.

17 The action being founded upon this statute, and the jurisdiction of this Court being given, the question of the citizenship of the several parties is immaterial, the rule being that where the right of action is based upon a federal statute, the United States Courts have jurisdiction without regard to diversity of citizenship. The objections that the complaint is indefinite and uncertain in certain respects is, in my judgment, without merit.

It follows from these considerations that the several demurrers must be overruled. The fact that the bill is multifarious is not presented by any of the demurrers, and, hence, that question is not before the Court.

The journal entry will save an exception to respective parties.

Indorsed: Filed Sep. 29, 1899. Oscar B. Hillis, Clerk. By R. C. Hoyt, Deputy.

18 Thereupon afterwards, to-wit: On the 5th day of December, 1899 Motion to Appoint Trustee was filed in said case, which said Motion is in words and figures following, to-wit:

In the Circuit Court of the United States, in and for the District of Nebraska.

Sumner Wallace, Complainant,
Doc. "T". vs. No. 261. In Equity.
The American National Bank, et al., Defendants.

Comes now the complainant, Sumner Wallace, and files this his motion in the above entitled action, and shows to the Court that by the original bill in this action One Thomas L. Kimball, as Trustee, held in trust certain notes, property and other securities as security to the notes mentioned in the original Bill of Complaint, and which form the basis of the action against the stockholders of said American National Bank.

That said Thomas L. Kimball, Trustee, was made a party to this action in order that the might make a full and complete statement to this Honorable Court as to the security still held by him, so that said security and any other assets of said Bank might be first ordered sold, and the proceeds applied to the payment of the claim of your orator, and the claims of the Union National Bank, and to the further end that this Honorable Court might be able to make the proper and necessary assessment against the stockholders of said American National Bank as prayed in said bill.

Said Complainant further shows that by said original bill he prayed, that said defendant, Thomas L. Kimball,
19 Trustee, might be required to make a full and complete report to this Honorable Court of all the assets of the American National Bank still in his hands, and held as security for the claim of your orator and any other creditors of said Bank; and further prayed that by order of this Court all of said assets might be sold and the proceeds thereof applied toward the payment of the indebtedness so secured, as by law and the agreement of said parties they should; and to the further end that this Honorable Court might make due and proper assessments against the stock and stockholders of said Bank, as hereinbefore prayed.

The said complainant further shows that the said Thomas L. Kimball was made Trustee as aforesaid by an agreement entered into between the said Union National Bank and the American National Bank a copy of which agreement is hereto attached and made a part of this motion.

That said agreement contemplated the carrying out of the same by said Thomas L. Kimball, as Trustee, or his successors in trust, but said agreement did not provide for any method for the appointment of a successor to said Thomas L. Kimball in case of necessity so to do.

And your complainant further shows that on the .... day of .... 1899, the said Thomas L. Kimball, Trustee, filed in this Court, a statement of the assets remaining in his hands as such Trustee, in compliance with the order of Court heretofore made, and that said assets have since been under the control and direction of this honorable Court, to which answer and statement of the said Thomas L. Kimball reference is hereby made.

Complainant further shows to the Court that since the filing of said statement and on or about the .... day of Sep-
20 tember, 1899, the said Thomas L. Kimball, deceased, and since his decease there has been no one with authority to handle or control said assets, and no one to whom any direction could be given by this Court with reference to the same; and that it is necessary that this Court appoint a successor to said Thomas L. Kimball in order that said assets may be conserved and disposed of by and under the direction of this Court, as prayed for in said original bill.

Complainant further shows that the said Thomas L. Kimball, Trustee as aforesaid, while he had control of said assets had in his employ in the management and control of the same one James Burness, who is thoroughly familiar with the said assets,

and their present condition and now has the same in his possession, and would be a suitable and proper person to act as such Trustee, and to be substituted in the place of said Thomas L. Kimball in said action.

Your Complainant therefore moves the Court for an order appointing said James Burness, as Trustee to take possession of all of the assets which were remaining in the hands of the said Thomas L. Kimball at his death, and to care for and dispose of the same under the direction of this Court, and to the end that said assets and the proceeds thereof may be used as contemplated in the original agreement between said American National Bank and the Union National Bank.

SUMNER WALLACE,
By Hall & McCulloch,
His Attorneys.

21 Agreement.

This Indenture Witnesseth: That the American National Bank, a corporation of Omaha, Nebraska, hereinafter designated party of the first part has and by these presents does hereby agree for the consideration hereinafter expressed to and with the Union National Bank, a corporation of Omaha, Nebraska, hereinafter designated party of the second part as follows, to-wit:

First: The party of the first part hereby agrees to sell and assign and does hereby sell and assign to the party of the second part the business of the party of the first part, its cash on hand, office furniture and fixtures, and such of its bills receivable as the party of the second part on examination may be willing to take as cash without recourse on the party of the first part.

Second, The party of the second part hereby agrees to purchase and does hereby purchase of the party of the first part the business of the party of the first part, cash on hand, office furniture and fixtures and such bills receivable as the party of the second part may be willing to take as cash on examination of the same without recourse on the party of the first part and to pay the party of the first part for said office furniture and fixtures the sum of $3750.00, and to assume the liabilities of the party of the first part to its depositors, and on account of its bills payable, and to liquidate the remaining assets of the party of the first part which may not be taken and received as cash by the party of the second part without charge or expense to the party of the first part, except such court charges and attorney's fees as may be found necessary and that such liquidation shall be conducted under the direction of

Thomas L. Kimball or such other person as may be agreed upon on behalf of the stockholders of the party of the first
22 part, it being understood and agreed that said Kimball, or his successor shall represent in said liquidation the stockholders of the party of the first part, and shall receive, hold and use the proceeds of the assets of the party of the first part as trustee of the parties hereto for the mutual protection of the rights of each in accordance with the terms and conditions of this agreement, and that all necessary court charges and attorneys fees attending said liquidation shall be incurred under the direction of said Kimball or his successor.

Third, In consideration of the above agreement of the party of the second part, the party of the first part hereby agrees to retain and pay one-half of the loss and expense which the party of the second part may sustain on account of the removal from its present quarters by reason of its unexpired lease on its present place of business and one-half of the loss which the party of the second part may sustain on the sale of its office furniture and fixtures, which furniture and fixtures are agreed upon at the present price and value of $3750.00, and the party of the first part further agrees to guarantee and does hereby guarantee the party of the second part against any and all loss on account of assuming the liabilities of the party of the first part as aforesaid; and to this end the party of the first part agrees to execute and deliver to the party of the second part its three promissory notes of equal sums for the amount of the liabilities which the party of the second part may assume after crediting the full amount of cash on hand and bills receivable and other assets which may be accepted by the party of the second part on examination, which notes shall draw interest from date at the rate of 6% per annum, payable quarter annually, and be payable in one, two and three years from date respectively, and shall be non-negotiable; and in
23 case of non-payment of any of said notes when due, the whole of said principal sum of all of said notes and accrued interest shall thereupon become due. And as further security to the party of the second part the party of the first part agrees to sell and assign, and does hereby sell and assign to the party of the second part all of its assets which may remain after the selection thereof by the party of the second part heretofore mentioned, including all its bills payable, stocks, bonds, personal property of every kind, and all real estate and rights and interest therein or liens thereon, with the understanding and agreement that the party of the second part shall have and hold said assets and properties subject to the right of the said Thomas L. Kimball or his successor to collect and convert the same into cash for the use and purposes heretofore expressed.

And it is further agreed that the party of the first part may pay and have credited on said notes at any time prior to maturity any sums of money of $500.00 and upwards, provided the sums so paid shall be in even hundreds.

Witness the names and corporate seal of the parties hereto this 21st day of December, A. D., 1895.

AMERICAN NATIONAL BANK OF OMAHA,
Attest: By Thomas L. Kimball, President.
Henry F. Wyman, Cashier.
UNION NATIONAL BANK OF OMAHA,
Attest: By Wm. W. Marsh, President.
Chas. E. Ford, Cashier.

Indorsed: Filed Nov. 6, 1899. Geo. H. Thummel, Clerk.

Indorsed: Filed Dec. 5, 1899. Geo. H. Thummel, Clerk.

24 Thereupon afterwards, to-wit: At the November 1899 Term of said Court, and on the 8th day of January, 1900, the following Order to Appoint James Burness, Trustee was signed and filed in said case, and duly entered of record on folio 393 Journal "Y" of said Court, to-wit:

Sumner Wallace, Complainant,
vs.
The American National Bank, et al., Respondents.

Order Appointing Trustee.

This cause having come on for hearing on the 8th day of December, 1899, upon the motion of the complainant and for the appointment of a Trustee in the place and stead of Thomas L. Kimball, and the Court being fully advised in the premises finds, that due and legal notice of the hearing of said motion was given to the respondents herein,

And the Court further finds that the said Thomas L. Kimball, mentioned in the Bill of Complainant as Trustee of the assets of the American National Bank, which assets are claimed by the Complainant to have been held by him as security for the claim of complainant and others, has, since the filing of his answer as trustee, deceased, and that it is necessary that a successor should be appointed to handle and care for said assets; and it appearing to the Court that James Burness is a proper and suitable person to act as such Trustee, and to carry out the contract and agreement by which said assets were placed in the care and custody of said Thomas L. Kimball, and that said James Burness should be appointed said Trustee.

It is therefore

Ordered that said James Burness be, and he is hereby appointed Trustee of the property and assets of the American National Bank, heretofore held by said Kimball as Trustee under and by virtue of an agreement between the American National Bank and the Union National Bank, a copy of which agreement is attached to the motion herein, and that said Burness, Trustee, shall handle and care for said assets, with the power and authority possessed by said Kimball, and that this order shall be his full authority to possess himself of all of the aforesaid property and assets remaining in the possession of said Kimball, Trustee, at the time of his decease. It is further

Ordered that the said Burness, Trustee, shall give a bond to the complainant, and the Union National Bank and the American National Bank and to be approved by the clerk of this court, in the sum of $25,000.00, conditioned to properly account for all of said property which may come into his possession by virtue of this order. To which order, each of the answering defendants duly except.

Indorsed:—Filed Jan. 8, 1900. Geo. H. Thummel, Clerk.

Thereupon afterwards, to-wit:—At the January 1900 Term of said Court, and on the 7th day of February, 1900, the following proceedings were had and done in said case, as appear of record on folio 462 Journal "Y" of said Court, to-wit:—

Sumner Wallace,
261—T. vs.
American National Bank, et al.

This cause coming on to be heard, leave is hereby given to the plaintiff to file Amended Bill herein within ten days from and after this date.

Thereupon afterwards, to-wit:—On the 17th day of February, 1900, Amended Bill of Complaint was filed in said case, which said Amended Bill is in words and figures following, to-wit:—

To the Honorable the Judges of the Circuit Court of the United States in and for the District of Nebraska.

Comes now Sumner Wallace, a resident and citizen of the State of New Hampshire, and brings this his amended bill of complaint by leave of this Court duly had and obtained, against American National Bank, a corporation, The McCague Invest-

ment Company, a corporation, Thomas H. McCague, Alex. G. Charlton, Elmer C. Brownlee, Elizabeth Dufrene, Executrix of the last will and testament of Alfred R. Dufrene, deceased, Edgar M. Morsman, Philip Mergin, George G. Wallace, William S. Poppleton, John S. King, William Wallace, Charles F. Manderson, Anna C. Crowell, Charles C. George, Robert H. McClellan, Peter Frenzer, John N. Frenzer, Charles H. Walworth, Frank W. Wessells, Frank Graham, James H. McCulloch, John P. Charlton, C. W. Morton, Royal Wilson, Jacob Wead, James J. Brown, Jr., James J. Woodward, Viola Coffin, Howard B. Smith, Edward G. Glenn, Emily J. Robinson, James H. Morton, George Morton, Mary E. Morton, William Wilson, Henry F. Wyman, Albert U. Wyman, F. R. McConnell, Trustee, John Speer, John E. Patrick, R. L. Brownlee, Caroline Carpenter, William C. Beer, Marcus C. Acheson, George Marples, Arthur H. Flack, Meade C. Williams, James H. Conrad, T. R. Neal, J. H. Hawkins, William Baird, The Manufacturer's National Bank of Boston, Mass., a corporation, John L. McCague, Morris Levy, National Bank Building Company of America, a corporation, John L. McCague, Thomas H. McCague, William L. McCague and Alex. G. Charlton, partners doing business under the firm name and style of McCague Bros., Rufus B. Bullock, Thomas L. Kimball, James Burness, Trustee, Alex. G. Charlton,
28 Secretary, Samuel Blackwell, and the Union National Bank of Omaha, Nebraska, and thereupon your orator complains and says:—

That the American National Bank and the Union National Bank are corporations organized under and by virtue of the banking laws of the United States, for the purpose of doing business in the City of Omaha, Douglas County, Nebraska, and within the jurisdiction of the Circuit Court of the United States within and for the District of Nebraska, as national banks; that the McCague Investment Company is a corporation organized under and by virtue of the laws of the State of Nebraska, and a citizen and resident of the State of Nebraska; that the National Bank Building Company of America is a corporation organized under and by virtue of the laws of the State of Massachusetts and a resident and citizen of said State, but doing business in the City of Omaha, Douglas County, Nebraska, and within the jurisdiction of this Court; that the defendant, William Wallace, is a citizen and resident of the State of Ohio; that the defendant, Anna C. Crowell, is a citizen and resident of the District of Columbia; that the defendant, Robert H. McClellan, is a citizen and resident of the State of Illinois; that the defendant Royal Wilson, is a citizen and resident of the State of Massachusetts; that the defendant, William Wilson, is a citizen and resident of the State of New

York; that the defendant, Jacob Wead, is a citizen and resident of the State of Illinois; that the defendant, John Speer, is a citizen and resident of the State of Illinois; that the defendant, R. L. Brownlee, is a citizen and resident of the State of Ohio; that the defendant, Caroline Carpenter, is a citizen and resident of the State of Massachusetts; that the defendant, Arthur H. Flack, is a citizen and resident of the State of New York; that the defendant, Meade C. Williams, is a citizen and resident of
29 the State of Illinois; that the defendant, J. H. Hawkins, is a citizen and resident of the State of Ohio; that the Manufacturers' National Bank is a corporation organized under and by virtue of the Banking Laws of the United States, for the purpose of doing business as a national bank, and is a citizen and resident of the State of Massachusetts; that Samuel Blackwell is a citizen and resident of the State of New York; that Thomas H. McCague, Alex. G. Charlton, Elmer C. Brownlee, Alfred R. Dufrene, Edgar P Morsman, Philip Mergin, George G. Wallace, William S. Poppleton, John S. King, Charles F. Manderson, Charles C. George, Peter Frenzer, John N. Frenzer, Charles H. Walworth, Frank W. Wessells, Frank Graham, James H. McCulloch, John P. Charlton, C. W. Morton, James J. Brown, Jr., James J. Woodward, Viola Coffin, Howard B. Smith, Edward G. Glenn, Emily J. Robinson, James H. Morton, George Morton, Mary E. Morton, Henry F. Wyman, Albert U. Wyman, F. R. McConnell, Trustee, John E. Patrick, William C. Beer, Marcus C. Acheson, George Marples, John H. Conrad, T. R. Neal, William Baird, John L. McCague, Morris Levy and John L. McCague, William L. McCague, Thomas H. McCague, and Alex. G. Charlton, partners doing business under the firm name and style of McCague Bros., Rufus B. Bullock, Thomas L. Kimball and Alex. G. Charlton, Secretary, are each and all of them citizens and residents of the State of Nebraska, and that all of the parties were at the time of the filing of the bill in this cause, and still are residents and citizens as hereinbefore averred, except Alfred R. Dufrene and Thomas L. Kimball, who have since deceased.

And your orator shows to this Honorable Court that in the year 1894, until December 1895, the said Union National Bank and the said American National Bank, by means of their officers and agents, held repeated conferences with re-
30 spect to the taking over of the business and office and office fixtures of the American National Bank by said Union National Bank, and the terms under which the said arrangement could be consummated. That numerous meetings were held between the prominent stockholders of the two said Banks, with that end in view.

That in the month of December, 1895, the American National Bank aforesaid was in such a financial condition that it became necessary for it to provide in some manner for the payment of a large amount of its deposits on or about January 1st, 1896, and that it did not have on hands sufficient funds with which to meet the demands which it knew would be made upon it at that time, and which, if not paid, would precipitate a demand by all of its depositors, and thus bring on at once the failure of the bank, with all the attendant loss to depositors.

That the amount of deposits at said time, and for which the Bank was liable upon call, was the sum of $193,949.78, and that the amount of available cash to meet the same was only the sum of $36,979.78.

That negotiations were then entered into by the officers of the Bank with the Union National Bank of Omaha, Nebraska, for a transfer of the business of the said American National Bank to the said Union National Bank, and to ascertain whether or not some arrangement could be entered into whereby the immediate obligations of the American National Bank should be paid, and an opportunity be given to realize upon its assets.

That as a result of said negotiations, and by and under the direction of the Board of Directors of the said American National Bank and the Board of Directors of the said
31 Union National Bank, a contract was entered into by and between said banks, which contract was signed by said American National Bank, by Thomas L. Kimball, President, and attested by Henry F. Wyman, Cashier, and by the said Union National Bank by William W. Marsh, President, and attested by Charles E. Ford, Cashier.

That a copy of said contract is hereto attached, marked "A" and prayed to be taken as part of this amended bill.

That immediately after the signing of the said agreement the transfer of the business of said American National Bank was made to the said Union National Bank pursuant to said agreement, and the said Union National Bank at once assumed the payment of all of the liabilities of the said American National Bank on the books of the said bank at the time of said transfer, except liabilities for circulation and stockholders, and the said Union National Bank, long prior to the commencement of this action, has paid all of such deposits in full.

That the liabilities so as aforesaid assumed by the Union National Bank were as follows:

Deposits	$193,949.78
Demand certificates	5,388.00
Time certificates	25,155.55
Certified checks	452.04
Cashier's checks	327.66
Banks and bankers	13,824.27
Bills payable	50,000.00

And that at said time the said Union National Bank received from the American National Bank the following items in cash, drafts and notes, as follows:

Cash	$36,795.78
Drafts on American Exchange National Bank, Chicago	8,000.00
Drafts on Lincoln National Bank, Chicago	2,000.00
Drafts on Continental National Bank, St. Louis	284.61
Drafts on Howard National Bank, Boston	87.40
Drafts on Central National Bank, Philadelphia	1,000.00
American Cashier's check	39,929.51
3 notes, $67,000 each, 1, 2 & 3 years	201,000.00
	$289,097.30

That the Cashier's check of $39,929.51 was paid by turning over to said Union National Bank notes for $22,299.10, and a cashier's check for $17,000, which was afterwards paid by the American National Bank.

Your orator further shows that the liabilities of the said American National Bank assumed by the said Union National Bank in excess of the assets of the said American National Bank taken and accepted by the Union National Bank as cash, and without recourse, pursuant to the aforesaid agreement, amounted to the sum of Two Hundred and One Thousand Dollars ($201,000.00).

That immediately after ascertaining under said agreement the amount of liabilities of the American National Bank assumed by the said Union National Bank in excess of the assets of the American National Bank taken and accepted by the Union National Bank as cash and without recourse, and on, the 23rd day of December, 1895, the said American National Bank, pursuant to the terms of said agreement and in
33 performance thereof, executed to the said Union National Bank its three promissory notes, aggregating the amount ascertained as aforesaid, to-wit: the said sum of Two

Hundred and One Thousand Dollars, each of said notes being for the sum of Sixty-seven Thousand Dollars ($67,000.00) and bearing interest at the rate of six per cent per annum from date, one of said notes maturing in one year from its date, one in two years from its date, and one in three years from its date.

That the balance of the assets of the said American National Bank, being all of the assets of the said American National Bank not taken by the said Union National Bank as cash, and without recourse, and in pursuance to and in performance of said agreement, were turned over to one Thomas L. Kimball, as Trustee of the parties to said agreement, to collect and convert the same into cash for the uses and purposes expressed in said agreement.

And your orator further complaining says, that on the 8th day of August, 1898, the said Union National Bank sold, assigned and transferred said note due in one year from date to your orator for a valuable consideration, and that your orator is and was at the commencement of this action the legal owner and holder thereof.

That a copy of said note, with endorsements thereon, is in words and figures as follows:

"$67,000.00. Omaha, Neb., Dec. 23, 1895.

One year after date, for value received, we promise to pay to the Union National Bank Sixty-seven Thousand Dollars at its Banking office in Omaha, Neb., with interest at 6 per cent per annum from date payable quarterly until paid.

THE AMERICAN NATIONAL BANK,
Attest: By Thomas L. Kimball, President.

Henry F. Wyman, Cas".

34 Endorsed: Paid Jan. 27, 1896.....$3,000.00
Paid Feb. 29, 1896..... 3,000.00
Paid Mar. 10, 1896..... 1,000.00
Int. paid to Mar. 23, 1896.
Paid May 5, 1896..... 6,000.00
Paid May 16, 1896..... 4,000.00
Int. paid to June 23, 1897.
Int. paid to Mar. 23, 1897.
Paid Mar. 23, 1897..... 8,235.00
Paid May 12, 1897..... 4,000.00

Pay Sumner Wallace or order, without recourse,

UNION NATIONAL BANK,
Aug. 8, 1898. By J. W. Thomas, its Cashier."

That there is now due and owing on said note to your orator from the said American National Bank the sum of $

And your orator further shows to this Court that the defendant the Union National Bank is a corporation doing business in Omaha, Douglas County, Nebraska (and within the jurisdiction of this Court) under and by virtue of the laws of the United States relating to national banks, and that said Union National Bank is as your orator is informed and believes, also a creditor of the said American National Bank, and is still the owner and holder of the two other notes hereinbefore described.

Your orator further avers and shows to this Honorable Court that the stockholders of the said American National Bank, including these defendants, and each and every of them, were, and each of them was advised of the situation and condition of the said American National Bank with respect to its inability to pay its depositors and liabilities at the time of the making of the agreement and notes hereinbefore set out, and that unless some arrangement was made to procure assistance for said American National Bank the said Bank could not pay its depositors, and that the loss under such circum-
35 stances would be very great, and that the liability of the stockholders would be greatly increased.

And your orator shows that with knowledge of such condition and liability of said American National Bank, the said stockholders and each and every of them, and the said corporation, the American National Bank, accepted and received the benefits of such contract and ratified and affirmed the same, and allowed, permitted and induced the said Union National Bank to pay out the said sums of money so as aforesaid paid by said Union National Bank to the depositors of the American National Bank, and accepted the benefits of said agreement and the payments of the same.

And your orator charges the fact to be that by means of the actions and inducements of the officers and agents of the American National Bank, and by means of the execution of said notes and contracts so as aforesaid made by and with the consent, procurement and inducement of the said stockholders, the defendants herein, and with the knowledge and consent of the said defendant, procured the Union National Bank to advance the money to pay off the aforesaid liabilities of the American National Bank, and procured the said Union National Bank to expend large sums of money to pay off and satisfy said liabilities, and that by means of such contract and notes the said defendants procured the said Union National

Bank to expend the sum of over Two Hundred and Eighty Thousand Dollars in extinguishing, paying off and selling the obligations of said American National Bank.

And this complainant charges the fact to be that the said defendants were, and each of them was advised of the negotiations during the time the same were pending, and the purpose and design of such negotiations, and acquiesced in the same and consented thereto.

36 And your orator further complaining says that at the time of the giving of the note described herein, the said American National Bank delivered to Thomas L. Kimball, as trustee, certain notes and property as security to the notes sued on herein and other notes to the said Union National Bank at the same time, and that said trustee was to collect said security and apply the proceeds thereof to the payment of said notes. That your orator has not a list or description of said security and is unable to give to the Court an accurate and full description of the same.

But your orator shows to the Honorable Court that the assets of the said American National Bank which, by the terms of said contract were not taken as cash, but which passed to the trustee, Thomas L. Kimball, are now held by one James Burness as Trustee, said Kimball since the commencement of this action having deceased, and the said Burness having been by the Court appointed his successor, and to the end that this Honorable Court may have all the matters herein for its cognizance, and for the preservation of such property and due administration of such trusteeship, and thus be able to do full and complete equity to all the parties hereto in and about the assessment and judgment against the stockholders of the said American National Bank as hereinafter set out, your orator shows that the said James Burness, Trustee, should bring into this Court the said assets in his hands to be and abide the order of this Honorable Court in and about the same, as equity and good conscience may require, so that full and complete justice may be done herein in the assessment and judgment herein prayed, and in the final liquidation of said bank, and the distribution of its assets by the final decree herein, or as may be just and equitable.

37 And your orator further complaining says' that the said respondent, the American National Bank, on the 14th day of January, 1896, went into voluntary liquidation under the provisions of Section 5220 of the Revised Statutes of the United States, and that since said time the said corporation, the American National Bank, has not done any banking

business except what may have been necessary in looking towards the closing up of its business.

And your orator further complaining avers and shows to the Court that he is a creditor of the said American National Bank, as hereinbefore shown, and that he brings this action on behalf of himself and all the other creditors of said American National Bank, against the said American National Bank and the shareholders thereof, to the end that the affairs of said Bank may be fully settled and [would] up, and that your orator, for himself, and all other creditors of said Bank, may have a decree and judgment against the said shareholders, as by law provided.

And your orator further says that all of the respondents named in this bill were shareholders of the said American National Bank at the time that it went into liquidation, as hereinbefore set out.

That the said American National Bank was capitalized for the sum of Two Hundred Thousand Dollars ($200,000.00) divided into shares of One Hundred Dollars ($100.00) each, making in all Two Thousand (2,000) shares of stock issued by the said Bank.

That your orator has made defendants in this action all of the shareholders of the said American National Bank, insofar as your orator has been able to ascertain the names thereof.

That the defendants named herein, at the time said American National Bank went into voluntary liquidation, as
38 hereinbefore set out, were the owners and holders of the number of shares set opposite their names, as hereinafter specified, to-wit::

Thomas H. McCague	10	shares,
Alex. G. Charlton	9	"
Elmer C. Brownlee	10	"
Alfred R. Dufrene	75	"
Edgar M. Morsman	75	"
Philip Mergin	7½	"
George G. Wallace	75	"
William S. Poppleton	56¼	"
John S. King	2	"
William Wallace	20	"
Chas. F. Manderson	10	"
Anna C. Crowell	9 3-4	"
Chas. C. George	15	"
R. H. McClellan	50	"
Peter Frenzer	15	"
John N. Frenzer	5	"

	Chas. W. Walworth.....22½	"
	Frank W. Wessells..... 3 3-4	"
	James H. McCulloch.....25	"
	John P. Charlton..... 7½	"
	C. W. Morton..... 6	"
	Royal Wilson.....10	"
	Jacob Wead..... 7½	"
	James J. Brown, Jr..... 5	"
	James J. Woodward..... 2½	"
	Viola Coffin 7½	"
	Howard B. Smith.....50	"
	Edward C. Glenn..... 5	"
	Emily J. Robinson..... 1½	"
	James H. Morton..... 2	"
	George Morton..... 1	"
	Mary E. Morton..... 1	"
	William Wilson 11¼	"
	Henry F. Wyman.....58¼	"
	A. U. Wyman.....10	"
	F. R. McConnell, Trustee..... 5	"
	John Speer.....10	"
	John E. Patrick.....15	"
	R. L. Brownlee.....25	"
	Miss Caroline Carpenter.....10	"
	W. C. Beer..... 6	"
	Marcus A. Acheson.....15	"
	George Marples.....15	"
	Arthur H. Flack..... 5	"
	Meade C. Williams.....11¼	"
	James H. Conrad.....10	"
	T. R. Neal.....10	"
	J. H. Hawkins.....25	"
	William Baird.....10	"
39	The Manufacturers National Bank 25	shares,
	John L. McCague.....287	"
	Morris Levy.....50	"
	National Bank Bldg. Co. of America 615	"
	McCague Bros. 50	"
	Rufus B. Bullock.....22½	"
	Thos. L. Kimball.....20	"
	Alex. G. Charlton, Secretary....20	"
	Samuel Blackwell.....50	"

That the number of shares above set out opposite the name of Alex. G. Charlton, Secretary, to-wit: twenty (20) shares, have been at all times since the placing of said shares in the

name of the said Alex. G. Charlton, Secretary, and still are owned by the said defendant, McCague Investment Company, and that the said defendant, McCague Investment Company, is liable upon any assessment which may be made upon said shares of stock.

That the said American National Bank, defendant, at the time it went into voluntary liquidation, and during the months of December, 1895, and January, 1896, and for a long time prior thereto, was wholly insolvent and unable to pay its creditors, and that the said American National Bank has ever since remained and still is wholly insolvent and unable to pay its creditors.

That by reason of the voluntary liquidation of the said Bank as hereinbefore set forth and the insolvency of said bank, and its inability to meet its obligations, this action is brought against the said American National Bank and its stockholders jointly under and through the authority granted by the laws of the United States relating to banking.

And your orator shows to this Court that under and by virtue of the banking laws of the United States, each and every of said shareholders, holders of stock of said American National Bank, is held individually responsible equally and ratably, and not one for another, for all contracts, debts and engagements of the said American National Bank to the extent of the amount of his, her or its stock therein, at the par value thereof, in addition to the amount invested in said shares, and that each and every of the stockholders of the said American National Bank, and each and every of the defendants named herein, are liable for the payment of the claim of your orator and of the claims of all other creditors of said American National Bank, to the amount of stock so held by said defendant.

And your orator further says that this action is brought by your orator for and on behalf of himself and all other creditors of the said American National Bank, in order that this honorable Court may ascertain who the creditors of said American National Bank are, and the total amount of the indebtedness of said Bank, and may further ascertain the amount of assessment necessary to be made against the shareholders of said American National Bank in order to pay such indebtedness, and that such assessment as may be necessary may be made by this Honorable Court, and that by its decree each and all of said shareholders may be required to pay into this Court the amount so found due, and that the amount so found due from each of said shareholders may be and become a judgment in this action against such shareholders.

And your orator shows to this Honorable Court that the Trustee so as aforesaid appointed should be brought into this Honorable Court to bring into this cause the assets so as by said agreement to him conveyed, to have the same subject to the order of this Honorable Court, as to it may seem meet, and to be and abide its order that complete equity may be done in respect to all the parties hereto, and that the affairs
41 of this said defendant, the American National Bank, may be marshalled between all parties and wound up and litigated in a due, orderly and equitable manner, and that the assets so in the hands of said Trustee may be preserved for the benefit of the creditors and shareholders of said American National Bank and dealt with as equity and good conscience may require.

And your orator further shows to this Honorable Court that since the filing of the original bill in this action the said Alfred R. Dufrene has deceased, and this action has been revived in the name of Elizabeth Dufrene, Executrix, of the last will and testament of said Alfred R. Dufrene.

Forasmuch, therefore, as your orator can have no adequate relief, except in this Court, to the end therefore that the defendants, may, if they can, show why your orator should not have the relief prayed, and may make a full disclosure and discovery of the matters aforesaid, according to the best and utmost of their knowledge, remembrance and belief, full, true, direct and perfect answer make to the matters hereinbefore stated and charged, but not under oath (an answer under oath being hereby expressly waived) your orator prays that it may be determined and ascertained in this action the amount due to your orator upon the note hereinbefore set out; and that it may further ascertain who the creditors of the said American National Bank are, and the amount of indebtedness due to your orator, and to each and every of the creditors of the said Bank, and that this Court may find, adjudge and decree the total indebtedness of the said American National Bank, and the names of all creditors thereof, together with the amounts due to each; and that this Court may further ascertain, adjudge and decree the names of the stockholders of the said American National Bank, the amount of stock held by each of
42 them, and may make due and proper assessment against the owners and holders of said stock, in order to meet the amount of indebtedness of the said American National Bank; and may further decree and adjudge that each of said shareholders shall pay into this Court, to the use and benefit of said creditors as hereinbefore set out, the amount so found due from said shareholders under such assessment as may be

made, and that the amount so found due from each of said shareholders shall be and remain a judgment against said shareholder until the same shall be paid or otherwise discharged according to law.

And your orator further prays that the said defendant, James Burness, be required to make full and complete record to this Honorable Court of all assets of the American National Bank still in his hands and held as security for the claim of your orator and any other of the creditors of said bank, and to be and abide the order of the Court herein as may be equitable and of good conscience to the further end that this Honorable Court may make due and proper assessment upon the stock and stockholders of said bank as hereinbefore prayed.

And may it please your honors to grant unto your orator its most gracious writ of subpoena of the United States of America, directed to the said American National Bank, McCague Investment Company, Thomas H. McCague, Alex. G. Charlton, Elmer C. Brownlee, Elizabeth Dufrene, Executrix of the last will and testament of Alfred R. Dufrene, deceased, Edgar M. Morsman, Philip Mergin, George G. Wallace, William S. Poppleton, John S. King, William Wallace, Charles F. Manderson, Anna C. Crowell, Charles C. George, Robert H. McClellan, Peter Frenzer, John N. Frenzer, Charles H. Walworth, Frank W. Wessells, Frank Graham, James H. McCulloch, John P. Charlton, C. W. Morton, Royal Wilson,
43 Jacob Wead, James J. Brown, Jr., James J. Woodward, Viola Coffin, Howard B. Smith, Edward G. Glenn, Emily J. Robinson, James H. Morton, George Morton, Mary E. Morton, William Wilson, Henry F. Wyman, Albert U. Wyman, F. R. McConnell, Trustee, John Speer, John E. Patrick, R. L. Brownlee, Caroline Carpenter, W. C. Beer, Marcus C. Acheson, George Marples, Arthur H. Flack, Meade C. Williams, James H. Conrad, T. R. Neal, J. H. Hawkins, William Baird, The Manufacturers National Bank, John L. McCague, Morris Levy, National Bank Building Company of America, John L. McCague, William L. McCague, Thomas H. McCague, and Alex. G. Charlton, partners as McCague Bros., Rufus B. Bullock, Thomas L. Kimball, Alex. G. Charlton, Secretary, Samuel Blackwell and the Union National Bank of Omaha, commanding them on a day certain, to appear and answer this bill of complaint, and to abide and perform such other order and decree in the premises as to the Court shall seem proper and required by the practice of equity and good conscience; and your orator will ever pray.

HALL & McCULLOCH,
JAMES H. MACOMBER,
Attorneys for Complainant.

United States of America,
District of Nebraska—ss.

J. H. McCulloch, being first duly sworn deposes and says that he is attorney for the above named complainant; who is a non-resident and absent from the State of Nebraska; that affiant has read the foregoing bill of compliant and knows the contents thereof; that the said bill is true of his own knowledge, except as to those matters which are therein stated to be on his information and belief, and as to those he believes it to be true.

J. H. McCULLOCH.

Subscribed in my presence and sworn to before me this 17th day of February, 1900.

ELLERY H. WESTERFIELD,
[Seal] Notary Public.

Exhibit "A".

Agreement.

This Indenture Witnesseth: That the American National Bank, a corporation of Omaha, Nebraska, hereinafter designated party of the first part, has and by these presents does hereby agree for the considerations hereinafter expressed to and with the Union National Bank, a corporation of Omaha, Nebraska, hereinafter designated party of the second part, as follows, to-wit:

First: The party of the first part hereby agrees to sell and assign and does hereby sell and assign to the party of the second part the business of the party of the first part, its cash on hand, office furniture and fixtures and such of its bills receivable as the party of the second part on examination may be willing to take as cash without recourse on the party of the first part.

Second: The party of the second part hereby agrees to purchase and does hereby purchase from the party of the first part the business of the party of the first part, cash on hand, office furniture and fixtures and such bills receivable as the party of the second part may be willing to take as cash on examination of the same without recourse on the party of the first part and to pay the party of the first part for said office furniture and fixtures the sum of Three Thousand Seven Hundred and Fifty Dollars ($3,750) and to assume the liabilities of the party of the first part to its depositors and on account of its bills payable and to liquidate the remaining assets
45 of the party of the first part which may not be taken and received as cash by the party of the second part

without charge or expense to the party of the first part, except such court charges and attorney's fees as may be found necessary, and that such liquidation shall be conducted under the direction of Thomas L. Kimball or such other person as may be agreed upon on behalf of the stockholders of the party of the first part, it being understood and agreed that said Kimball or his successor shall represent in said liquidation the stockholders of the party of the first part and shall receive, hold and use the proceeds of the assets of the party of the first part as trustee of the parties hereto for the mutual protection of the rights of each in accordance with the terms and conditions of this agreement, and that all necessary court charges and attorney's fees attending said liquidation shall be incurred under the direction of the said Kimball, or his successor.

Third: In consideration of the above agreement of the party of the second part, the party of the first part hereby agrees to sustain and pay one half of the loss and expense which the party of the second part may sustain on account of removal from its present quarters by reason of its unexpired lease on its present place of business, and one half of the loss which the party of the second part may sustain on the sale of its office furniture and fixtures, which furniture and fixtures are agreed upon at the present price and value of Three Thousand Seven Hundred and Fifty Dollars ($3,750) and the party of the first part further agrees to guarantee and does hereby guarantee the party of the second part against any and all loss on account of assuming the liabilities of the party of the first part as aforesaid. And to this end the party of the first part agrees to execute and deliver to the party of the second part its
46 three promissory notes of equal sums for the amount of liabilities which the party of the second part may assume after crediting the full amount of cash on hand and bills receivable and other assets which may be accepted by the party of the second part on examination, which notes shall draw interest from date at the rate of six per cent per annum, payable quarter-annually and be payable in one, two and three years from date, respectively, and shall be non-negotiable.

And in case of non-payment of any of said notes when due, the whole of said principal sum of all of said notes and accrued interest shall thereupon become due. And as further security to the party of the second part, the party of the first part agrees to sell and assign and does hereby sell and assign to the party of the second part all of its assets which may remain after the selection therefrom by the party of the second part heretofore mentioned, including all its bills receivable,

stocks, bonds, personal property of every kind and all real estate and rights and interests therein or lien thereon, with the understanding and agreement that the party of the second part shall have and hold said assets and properties subject to the right of the said Thomas L. Kimball, or his successor, to collect and convert the same into cash for the uses and purposes hereinbefore expressed.

And it is further agreed that the party of the first part may pay and have credited on said notes at any time prior to maturity any sums of money of Five Hundred Dollars ($500) and upwards, provided the sums so paid shall be in even hundreds.

Witness the names and corporate seals of the parties
47 hereto this 21st day of December, A. D. 1895.

THE AMERICAN NATIONAL BANK
OF OMAHA,

Attest: By Thomas L. Kimball, President.
Henry F. Wyman, Cashier.

UNION NATIONAL BANK OF OMAHA,

Attest: By Wm. W. Marsh, President.
Chas. E. Ford, Cashier.

Indorsed: Filed Feb. 17, 1900. Geo. H. Thummel, Clerk.

Re-Filed Jan. 8, 1901. Geo. H. Thummel, Clerk.

48 Thereupon afterwards, to-wit: At the November 1901 Term of said Court, and on the 8th day of January, 1901, the following proceedings were had and done in said case, as appear of record on folio 244 Journal "Z" of said Court, to-wit:

Sumner Wallace,
261-T vs.
American National Bank, et al.

Order.

Now at this time, this 31st day of December, A. D. 1900 the motions heretofore filed to strike the amended bill of complainant from the files came on to be heard, whereupon, on consideration of the same, the Court sustains the motions to strike said amended bill, with leave of the complainant to apply to refile the same on compliance with Equity Rule 29.

49 Thereupon afterwards, to-wit: At the November 1900 Term of said Court, and on the 8th day of January,

1901, the following Order was signed and filed in said case, and duly entered of record on folio 244, Journal "Z" of said Court, to-wit:

Sumner Wallace,
vs.
American National Bank, et al.,

Order.

Now at this time, this 8th day of January, A. D. 1901, the motion of the complainant to refile his amended bill came on to be heard, whereupon the Court, having inspected said motion and the notices served upon the several defendants therefor, finds that all of the defendants who have appeared by counsel in said case were duly served with notice of the hearing of said motion, and the complainant having complied with the order heretofore made in reference to Equity Rule 29, it is therefore

Ordered that the complainant may file his amended bill instanter. To all of which the defendants excepted. The defendants are given leave to withdraw their respective answers and refile the same, or plead to said amended bill as they may elect, by Feb. 4th next, and all respondents to plead or answer said amended bill by Feb. 4th next.

W. H. MUNGER, Judge.

Indorsed: Filed Jan. 8, 1901. Geo. H. Thummel, Clerk.

50 Thereupon afterwards, to-wit: On the 24th day of January, 1901, Answer of Edgar M. Morsman to Amended Bill of Complaint was filed in said case which said Answer is in words and figures following, to-wit:

In the Circuit Court of the United States within and for the District of Nebraska.

Sumner Wallace, Complainant,
Doc. "T". vs. Page 261.
American National Bank, et al., Defendants.

Separate Answer of Edgar M. Morsman, one of the Defendants in the above entitled cause, to the Amended Bill of Complaint.

To the Honorable, the Judges of the Circuit Court of the United States, within and for the District of Nebraska:

Edgar M. Morsman, one of the defendants in the above entitled cause, answering plaintiff's amended bill of complaint, separately and for himself alone, says:

(1) This defendant admits that it is true that the complainant Sumner Wallace, is a resident and citizen of the State of New Hampshire; that the American National Bank of Omaha, and the Union National Bank of Omaha, defendants herein, are corporations organized under and by virtue of the banking laws of the United States, for the purpose of doing business in the City of Omaha, in the County of Douglas and State of Nebraska, and within the jurisdiction of this Court, as National Banks, and are citizens of said State of Nebraska; that the McCague Investment Company is a corporation organized under and by virtue of the laws of the State of Nebraska, and a citizen and resident of the State of Nebraska; that the National Bank Building Company of America, is a corporation or-
51 ganized under and by virtue of the laws of the State of Nebraska, and a resident and citizen of said state, doing business in the City of Omaha in said State, and within the jurisdiction of this court; that the defendant, William Wallace, is a citizen and resident of the State of Ohio; that the defendant, Anna C. Crowell, is a citizen and resident of the District of Columbia; that the defendant, Robert H. McClellan, is a citizen and resident of the State of Illinois; that the defendant, Royal Wilson, is a citizen and resident of the State of Massachusetts; that the defendant, William Wilson is a citizen and resident of the State of New York; that the defendant, Jacob Wead is a citizen and resident of the State of Illinois; that the defendant, John Spear, is a citizen and resident of the State of Illinois; that the defendant, R. L. Brownlee, is a citizen and resident of the State of Ohio; that the defendant, Caroline Carpenter, is a citizen and resident of the State of Massachusetts; that the defendant Arthur H. Flack, is a citizen and resident of the State of New York; that the defendant Mead C. Williams is a citizen and resident of the State of Illinois; that the defendant, J. H. Hawkins is a citizen and resident of the State of Ohio; that the Manufacturer's National Bank is a corporation organized under and by virtue of the laws of the United States, for the purpose of doing business as a national bank, and is a citizen and resident of the State of Massachusetts; that the defendant Samuel Maxwell is a citizen and resident of the State of New York; that the defendants Elizabeth DuFrene, executrix of the estate of Alfred R. Dufrene, deceased, Thomas H. McCague, Alex. Charlton, Elmer C. Brownlee, Philip Mergin, George G. Wallace, William S. Poppleton, John S. King, Charles F. Manderson, Charles C. George, Peter Frenzer, John N. Frenzer, Charles H. Walworth, Frank W. Wessels, Frank Graham, James H. McCulloch, John R. Charlton, C. W. Morton, James J. Woodward, Viola
52 Coffin, Howard B. Smith, Edward G. Glenn, Emily J. Robinson, James H. Morton, George Morton, Mary E.

Morton, Henry F. Wyman, Albert U. Wyman, F. R. McConnell, Trustee, John E. Patrick, William C. Beer, Marcus C. Acheson, George Marples, James H. Conrad, T. R. Neal, William Baird, John L. McCague, Morris Levy, William L. McCague, Thomas H. McCague, Alex. G. Charlton, Rufus B. Bullock, ... Administrator of the estate of Thomas L. Kimball, deceased, and this defendant, are each citizens and residents of the State of Nebraska.

(2) The defendant denies, and avers that it is not true, that in the year 1894, and until December, 1895, the said Union National Bank of Omaha, and the said American National Bank, by means of their officers and agents, held repeated conferences with respect to the taking over of the business and office and office fixtures of the American National Bank by said Union National Bank, and the terms under which such an arrangement could be consummated, and he denies that numerous meetings were held between the prominent stockholders of the two said banks with that end in view. He admits that it is true that in the month of December, 1895, it became necessary for the American National Bank to provide in some manner for the payment of a large amount of its deposits, on or about January 1st, 1896, and he admits that there was reason at said date to apprehend a demand for the payment of such proportion or amount of deposits then held by the said American National Bank, as the said bank had not, and would not have, cash funds with which to pay; defendant admits that in the month of December, 1895, and for some time prior thereto, said American National Bank was in failing condition and there were negotiations between the officers of the American National Bank and the Union National Bank,
53 for the transfer by the said American National Bank, to the Union National Bank, of the business and assets of the said American National Bank, which negotiations resulted in the agreement in writing referred to in the amended bill of complaint.

(3). This defendant admits that it is true that the amount of deposits held by the said American National Bank of Omaha, at the date of said agreement in December, 1895, was the sum of $193,949.78, but he denies that it is true that the said American National Bank had no more than the sum of $36,979.78 in cash, available to meet the said deposits, and avers, that, in fact, the said American National Bank had in cash and cash items available as cash, about the sum of $49,000.00. Defendant admits that at said time, in the month of December, 1895, negotiations were entered into by and between the officers of the said American National Bank, and

Union National Bank, for a transfer of the business of the said American National Bank to said Union National Bank, and for the payment of the obligations of the said American National Bank, and to provide an opportunity to realize upon its assets, and that as a result of said negotiations, and by and under the direction of the Board of Directors of the American National Bank, a contract in writing was entered into by and between said banks, executed on the part of the American National Bank by Thomas L. Kimball, President, and attested by Henry F. Wyman, Cashier, and executed by and on behalf of the Union National Bank by William W. Marsh, its President, and attested by Charles E. Ford, its Cashier, a copy of which said contract in writing is attached to the amended bill of complaint.

54 (4) The defendant admits that it is true that immediately after the signing of the said agreement, the transfer of the business of the American National Bank was made to the said Union National Bank, pursuant to said agreement, and that said Union National Bank assumed the payment of all of the liabilities of the said American National Bank to its depositors, and on account of its bills payable; but whether or not the said Union National Bank had, prior to the commencement of this suit, paid all of said liabilities in full, this defendant has no knowledge or information, otherwise than that derived from the averments of the bill of complaint, and therefore he denies the same.

(5) It is true that the liabilities of the American National Bank so assumed by the Union National Bank, were composed of sums due to depositors, holders of demand certificates, time certificates, certified checks, cashier's checks, banks and bankers, and bills payable, amounting in the aggregate to the sum of $289,097.30 and it is also true that the said Union National Bank at the same time received from the American National Bank, cash items, cashier's checks and notes, equal to said sum of $289,097.30, as set forth in the plaintiff's amended bill of complaint; and it is also true that the cashier's check for the sum of $39,929.51 so delivered to the said Union National Bank, was paid in the manner and form as set forth in the amended bill of complaint.

(6) It is true that the liabilities of the American National Bank assumed by the Union National Bank in excess of the assets of the American National Bank taken and accepted by the Union National Bank as cash and without recourse on the American National Bank, pursuant to the agreement aforesaid, amounted to the sum of $201,000.00, and immediately after ascertaining under said agreement, the amount of lia-

bilities of the American National Bank so assumed by
55 the Union National Bank in excess of the assets of the American National Bank taken and accepted by the Union National Bank as cash without recourse, and on the 23d day of December, 1895, the said American National Bank, pursuant to the terms of said agreement and in performance thereof, executed to the said Union National Bank, its three promissory notes, each for the sum of $67,000.00 and bearing interest at the rate of six per cent per annum from date, one of said notes maturing in one year, one in two years, and one in three years from the date thereof; but this defendant denies, and says that it is not true that the balance of the assets of the American National Bank, being all of the assets of said bank not taken by the Union National Bank as cash and without recourse, were turned over to Thomas L. Kimball, as trustee of the parties to said agreement, to collect and convert the same into cash, for the uses and purposes expressed in said agreement, and defendant avers that said remaining assets of the American National Bank were then, pursuant to the terms of the said agreement, turned over to the possession and control of the Union National Bank, pursuant to the said agreement.

Defendant denies and says it is not true, that on the 8th day of August, 1898, the Union National Bank sold, assigned and transferred the one of said notes for the sum of $67,000.00, maturing in one year from date, to the complainant, for a valuable consideration, and denies that it is true that the complainant is, and was at the time of the commencement of this suit, the legal owner and holder thereof; but defendant admits that the copy set out in the bill of complaint is a true copy of the note of the American National Bank for the said sum of $67,000.00 first maturing, and that no payments have been
made thereon, save and except those which are thereon
56 indorsed, and which said payments, and the dates thereof, are truly set out in the plaintiff's bill of complaint; but this defendant avers that other sums of money came into the hands of the said The Union National Bank prior to the alleged transfer of said note to the plaintiff, which should have been applied thereon as payments, as hereinafter set forth.

(8) Defendant denies that the defendant Union National Bank is a creditor of the defendant American National Bank, and the owner and holder of the two other notes of the American National Bank for the sum of $67,000.00 each.

(9) Defendant denies and says it is not true, that the stockholders of the American National Bank, including this defendant were advised of the situation and condition of the

American National Bank, and that it was unable to pay its depositors and liabilities at the time of making the agreement and notes referred to in the bill of complaint, and that unless some arrangement was made to procure assistance for said American National Bank, it could not pay its depositors, and that the loss, under such circumstances, would be very great, and the liability of stockholders would be greatly increased.

(10). Defendant denies and says it is not true, that with knowledge of such condition and liability of said American National Bank, the said stockholders and each and every of them, and said corporation, the American National Bank, and this defendant, accepted and received the benefits of such contract and ratified and affirmed the same, and allowed, permitted and induced the said Union National Bank to pay out the said sums of money to the depositors of the American National Bank, and accept the benefits of said agreement and the payments of the same, and he denies and says it is not true,
57 as alleged in the amended bill, that by means of the actions and inducements of the officers and agents of the American National Bank, and by means of the execution of said notes and contracts referred to in the amended bill, made by and with the consent, procurement and inducement of said stockholders, and with the knowledge and consent of the said defendants procured the Union National Bank to advance the money to pay off the aforesaid liabilities of the American National Bank, and procured the said Union National Bank to expend large sums of money to pay off and satisfy said liabilities, and he denies that by means of such contract and notes, the said defendants, and particularly, this answering defendant, procured the said Union National Bank to expend the sum of over $280,000.00, or any other sum, in extinguishing, paying off and settling the obligations of said American National Bank, and he denies, and says it is not true, that he was advised of the negotiations during the time the same were pending and of the purpose and design of such negotiations, and acquiesced in and consented to the same.

(11). Defendant denies, and says it is not true, that at the time of the giving of the note described in the plaintiff's amended bill, the said American National Bank delivered to Thomas L. Kimball, as trustee, certain notes and property, as security to the note set forth in the plaintiff's bill of complaint, and other notes given to the said Union National Bank at the same time; but this defendant admits that at the time of giving said three notes for $67,000.00 each, the said American National Bank did deliver to the Union National Bank, certain notes and property, pursuant to the agreement between the said two

banks referred to in the plaintiff's bill of complaint, and
58 that such notes and property were to be liquidated by
the Union National Bank through the said Thomas L. Kimball, as trustee, and the proceeds thereof applied to the payment of the sum represented by said three promissory notes, amounting in the aggregate, to the sum of $201,000.00, so far as necessary to satisfy said sum.

(12) Defendant denies, and says it is not true, that on the 14th day of January, 1896, the American National Bank went into voluntary liquidation, under the provisions of Section 5220 of the Revised Statutes of the United States; but defendant admits that since said 14th day of January, 1896, the American National Bank has not done any banking business.

(13). Defendant admits that it is true that all of the defendants named in the amended bill as such, were, in fact, shareholders of the American National Bank on the 14th day of January, 1896, and holders and owners of shares set opposite their names in the plaintiff's amended bill of complaint, including this answering defendant as the owner of 75 shares.

(14). Defendant denies that the American National Bank was, during the months of December, 1895, and January, 1896, insolvent and unable to pay its creditors.

(15). Defendant admits that it is true, that under and by virtue of the banking laws of the United States, each shareholder of the American National Bank is held individually responsible, equally and ratably, but not one for another, for all contracts, debts and engagements of said American National Bank, contracted in the ordinary course of its business, to the extent of the amount of his, her, or its stock therein, at the par value thereof, in addition to the amount paid for such shares; but this defendant avers that the plaintiff's claim was
not so contracted, and denies that he is liable for the
59 payment of the claims of any other creditor, or creditors,
or any part thereof, arising out of the said notes, or any of said notes, for the sum of $67,000.00 each, referred to in the amended bill of complaint.

And further answering, this defendant now avers;

(16.) That on the 21st day of December, A. D. 1895, pursuant to a resolution of its Board of Directors adopted at a special meeting of said Board on the date last aforesaid, and which said resolution in terms and so far as the Board of Directors had power, authorized the same, the defendant American National Bank of Omaha, by writing, executed in the name of the said American National Bank of Omaha, by Thomas L. Kim-

ball, who was then its President, and attested by Henry F. Wyman, who was then its Cashier, entered into an agreement in writing, with the defendant The Union National Bank of Omaha, whereby (1) The said The American National Bank of Omaha sold and assigned to the said The Union National Bank of Omaha, the business, the cash on hand, the office furniture and fixtures, belonging to the said The American National Bank of Omaha, and such of the bills receivable belonging to the said The American National Bank of Omaha, as, upon examination thereof, the said The Union National Bank of Omaha, should be willing to accept as cash and without recourse on the said The American National Bank of Omaha; (2) the said The American National Bank of Omaha further agreed to sustain and pay one half of the loss and expense which the said The Union National Bank of Omaha might sustain by reason of its removal from its then place of business, on account of an unexpired lease for the premises then occupied, and one half of the loss which the said Union National Bank of Omaha might sustain on the sale of its own furniture and fixtures, and to guarantee the said The Union National Bank of
60 Omaha against loss on account of assuming the liabilities of the said The American National Bank of Omaha, as provided for in said agreement, and in the execution of such guaranty to execute and deliver to the said The Union National Bank of Omaha, the three promissory notes of the said The American National Bank of Omaha, in equal sums, for the remainder of the amount of the liabilities of the said The American National Bank of Omaha, which the said The Union National Bank of Omaha, should by the terms of said agreement, assume, after deducting therefrom the cash, bills receivable and other assets so sold to and accepted by the said The Union National Bank of Omaha, and which said three promissory notes it was provided by said agreement, should draw interest at the rate of six per cent per annum, become due in one, two and three years from their date, respectively, be non-negotiable, and all become due upon the non-payment of any one at maturity; (3), as further security to the said The Union National Bank of Omaha, the said The American National Bank of Omaha sold and assigned to the said The Union National Bank of Omaha, all of its remaining assets, bills receivable, stocks, bonds, personal property, real estate, rights and interests therein, or liens thereon, subject to the right of Thomas L. Kimball to collect and convert the same into money and apply the money so collected, as trustee for both parties to the said agreement and in consideration of the said agreement on the part of the said The American National Bank of Omaha, the said The Union National Bank of Omaha agreed:

(1) to take the furniture and fixtures so sold by the said The American National Bank of Omaha to it, at the agreed price of $3750.00; (2) to assume all of the liabilities of the said The American National Bank of Omaha to its depositors and on account of its bills payable; (3) to liquidate the re-
61 mainder of the assets of the said The American National Bank of Omaha, after deducting the portions thereof which were to be taken by the said The Union National Bank of Omaha, as aforesaid, as cash, without any charge or expense therefor, excepting such court charges and attorneys fees as might be found necessary; (4) that such liquidation should be conducted under the direction of the said Thomas L. Kimball, or such other person as should be agreed upon, on behalf of the stockholders of the said The American National Bank of Omaha, and that the said Kimball should represent the stockholders of the said The American National Bank of Omaha in such liquidation, and receive, hold and use the proceeds of the assets of the said The American National Bank of Omaha as trustee for the parties to the said agreement, and for the mutual protection of the rights of each, in accordance with the terms of the said agreement, and that all necessary charges and attorney's fees attending such liquidation, should be incurred under the direction of said Thomas L. Kimball, or his successor. A true copy of said agreement is attached hereto and made part hereof, to which this defendant prays leave to refer.

(17). This defendant further avers, that immediately after the execution of the said agreement, and pursuant thereto, the said Thomas L. Kimball and Henry F. Wyman, the President and Cashier respectively, of the defendant The American National Bank of Omaha, and for and on behalf of the said The American National Bank of Omaha, delivered and turned over to the said The Union National Bank of Omaha, all assets of every character then owned by the said The American National Bank of Omaha, and on the 25th day of December, A. D. 1895, the said The Union National Bank of Omaha agreed to accept as cash, and without recourse on the said The
62 American National Bank of Omaha, the cash on hand amounting to the sum of $36,795.78, drafts on Chicago, amounting to the sum of $10,000.00, drafts on St. Louis, amounting to the sum of $284.61, drafts on Boston amounting to the sum of $87.40, and drafts on Philadelphia amounting to the sum of $1,000.00. And it was then ascertained and agreed between the said parties, that the difference between the amount of such assets so accepted by the Union National Bank as cash, and without recourse, and the total amount of liabilities of the American National Bank assumed by the Union National Bank pursuant to said agreement, was the

sum of $240,929.51, and thereupon the said Thomas L. Kimball as President, and Henry F. Wyman, as Cashier, of the said The American National Bank of Omaha, in compliance with the said agreement, and in execution of the guarantee therein, executed and delivered to the said The Union National Bank of Omaha, a Cashier's Check for the sum of $39,929.51, and three promissory notes each for the sum of $67,000.00, said three promissory notes becoming by their terms, due in one, two and three years respectively, and which said Cashier's check for $39.929.51 has been fully paid, and of which said notes the copy which is set out in the plaintiff's bill of complaint is the one first maturing, and which said three promissory notes constitute the only indebtedness of the said The American National Bank of Omaha.

(18) This defendant further avers that the said plaintiff Sumner Wallace, has not reduced his said claim founded upon the promissory note set out in the amended bill of complaint, to judgment against the American National Bank of Omaha, in any court; that the assets of the said The American National Bank of Omaha, turned over and delivered to The Union National Bank of Omaha as aforesaid, not including any
63 sum for the business or good will, amounted, at their nominal or face value, to the sum of $539,828.33 and that of said assets there now remain in the hands of the said The Union National Bank of Omaha, assets of the nominal or face value of $371,765.00, which have not been in any manner liquidated or exhausted for the satisfaction of the plaintiff's said claim, or any of the said promissory notes of $67,000.00 each; that in the process of liquidating the remainder of said assets, The Union National Bank of Omaha, and said Thomas L. Kimball, former trustee have wrongfully charged the trust fund aforesaid with the sum of $4,639.96, on account of expense for salaries paid for the service of clerks and assistants, and the further sum of $544.17 on account of expense for advertising and other large sums, all incurred in the execution of said trust, and in the liquidation of such assets, which will more fully appear by reference to the answer and report of said Thomas L. Kimball, former trustee, filed herein. And this defendant now avers, that by the terms of the agreement aforesaid the said The Union National Bank of Omaha, was bound to assume and pay all such expense of liquidation, and this defendant therefore avers that in taking an account of the amount due on said note, copy of which is set forth in the plaintiff's bill, if such account be taken by or under the direction of the court, the said several sums so wrongfully charged to the trust fund should be credited as payments on said note as of the proper date, which date this defendant is unable to more specifically set forth.

This defendant now avers that the agreement referred to in complainant's amended bill and hereinbefore referred to, and the three promissory notes aforesaid for the sum of
64 $67,000.00 each, were ultra vires and void acts of the said The American National Bank of Omaha, and were not entered into in the ordinary course of its business, and create no obligation for which this defendant is as a stockholder responsible.

Wherefore, this defendant prays that the plaintiff's bill of complaint be dismissed, and that he have judgment for his costs.

W. W. MORSMAN,
Counsel and Solicitor for E. M. Morsman.

Agreement.

This Indenture Witnesseth: That the American National Bank, a corporation of Omaha, Nebraska, hereinafter designated party of the first part, has and by these presents does hereby agree for the considerations hereinafter expressed to and with the Union National Bank, a corporation of Omaha, Nebraska, hereinafter designated party of the second part as follows, to-wit:

First: The party of the first part hereby agrees to sell and assign, and does hereby sell and assign to the party of the second part the business of the party of the first part, its cash on hand, office furniture and fixtures and such of its bills receivable as the party of the second part on examination may be willing to take as cash without recourse on the party of the first part.

Second: The party of the second part hereby agrees to purchase and does hereby purchase from the party of the first part the business of the party of the first part, cash on hand, office furniture and fixtures, and such bills receivable as the party of the second part may be willing to take as cash on examination of the same without re-
65 course on the party of the first part and to pay the party of the first part for said office furniture and fixtures the sum of Three Thousand Seven Hundred and Fifty Dollars ($3,750) and to assume the liabilities of the party of the first part to its depositors and on account of its bills payable and to liquidate the remaining assets of the party of the first part which may not be taken and received as cash by the party of the second part without charge or expense to the party of the first, except such court charges and attorney's fees as may be found necessary, and that such

liquidation shall be conducted under the direction of Thomas L. Kimball or such other person as may be agreed upon on behalf of the stockholders of the party of the first part, it being understood and agreed that said Kimball or his successor shall represent in said liquidation the stockholders of the party of the first part and shall receive, hold and use the proceeds of the assets of the party of the first part as trustee of the parties hereto for the mutual protection of the rights of each in accordance with the terms and conditions of this agreement, and that all necessary court charges and attorney's fees attending said liquidation shall be incurred under the direction of the said Kimball, or his successor.

Third: In consideration of the above agreement of the party of the second part, the party of the first part hereby agrees to sustain and pay one half of the loss and expense which the party of the second part may sustain on account of removal from its present quarters by reason of its unexpired lease on its present place of business, and one half of the loss which the party of the second part may sustain on the sale of its 66 office furniture and fixtures, which furniture and fixtures are agreed upon at the present price and value of Three Thousand Seven Hundred and Fifty Dollars ($3,750) and the party of the first part further agrees to guarantee and does hereby guarantee the party of the second part against any and all loss on account of assuming the liabilities of the party of the first part as aforesaid.

And to this end the party of the first part agrees to execute and deliver to the party of the second part its three promissory notes of equal sums for the amount of liabilities, which the party of the second part may assume after crediting the full amount of cash on hand and bills receivable and other assets which may be accepted by the party of the second part on examination, which notes shall draw interest from date at the rate of six per cent per annum, payable quarter-annually, and be payable in one, two and three years from date respectively, and shall be non-negotiable. And in case of nonpayment of any of said notes when due, the whole of said principal sums of all of said notes and accrued interest shall thereupon become due. And as further security to the party of the second part, the party of the first part agrees to sell and assign and does hereby sell and assign to the party of the second part all of its assets which may remain after the selection therefrom by the party of the second part heretofore mentioned, including all its bills receivable, stocks, bonds, personal property of every kind and all real estate and rights and interests therein or liens thereon, with the understanding

and agreement that the party of the second part shall have and hold said assets and properties subject to the right of the said Thomas L. Kimball, or his successor, to collect and convert the same into cash for the use and purposes hereinbefore expressed.

67 And it is further agreed that the party of the first part may pay and have credited on said notes at any time prior to maturity any sums of money of Five Hundred Dollars ($500) and upwards, provided the sums so paid shall be in even hundreds.

Witness the names and corporate seals of the parties hereto this 21st day of December, A. D. 1895.

THE AMERICAN NATIONAL BANK OF OMAHA,

Attest: By Thos. F. Kimball, President.
Henry F. Wyman, Cashier.

UNION NATIONAL BANK OF OMAHA,

Attest: By Wm. W. Marsh, President,
Chas. E. Ford. Cashier.

Endorsed: Filed Jan. 24, 1901. Geo. H. Thummel, Clerk.

68 Thereupon afterwards, to-wit:—On the 4th day of February, 1901 The Joint and Several Answer of Charles C. George, Henry F. Wyman, Albert U. Wyman and Morris Levy was filed in said case, which said Answer is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

Sumner Wallace, Plaintiff,
Doc. "T". No. 261 vs. In Equity.
The American National Bank, et al., Defendants.

The joint and several answer of Charles C. George, Henry F. Wyman, Albert U. Wyman, and Morris Levy, four of the defendants, to the amended Bill of Complaint of Sumner Wallace.

These defendants respectively, now and at all times hereafter reserving to themselves all right of exception to said complainant's said amended Bill of Complaint, for answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, say:

That they severally admit that the American National Bank and the Union National Bank are corporations organized under and by virtue of the banking laws of the United States for the purpose of doing business in the City of Omaha, Douglas County, Nebraska; deny that said banks are within the jurisdiction of the Circuit Court of the United States within and for the District of Nebraska as national banks; admit that each of these answering defendants is a resident and citizen of the State of Nebraska; admit that the plaintiff is a
69 resident and citizen of the state therein set forth; and admit that all of the parties were at the time of the filing of the bill in this cause, and still are, residents and citizens as in said amended bill averred, except Alfred R. Dufrene and Thomas L. Kimball, who have since deceased, and James J. Brown, Jr., who died before said original bill was filed.

And these defendants further severally answering say, that they deny that it is true that in the year of 1894, until December, 1895, the said Union National Bank and the said American National Bank by means of their officers and agents held repeated conferences with respect to the taking over of the business and office fixtures of the American National Bank by said Union National Bank and the terms under which the said arrangement could be consummated, and deny that numerous meetings were held between the prominent stockholders of the two said banks with that end in view.

And these defendants further severally answering say, that they deny that in the month of December 1895, the American National Bank aforesaid was in such a financial condition that it became necessary for it to provide in some manner for the payment of a large amount of its deposits on or about January 1st, 1896, but admit that said bank was in such a financial condition that upon certain contingencies arising it might have become necessary for it to provide in some manner for the payment of a large amount of its deposits on or about Jan. 1, 1896; and deny that it did not have on hand sufficient funds with which to meet demands which it knew would be made upon it at that time, but admit that it did not have on hands sufficient funds with which to meet the demands which it knew would be made upon it at that time, in the event such contingencies did arise.

70 And these defendants further severally answering say, that they have been informed and believe it to be true, that the amount of deposits at said time, and for which the bank was liable upon call, was the sum of $193,949.78, but deny it to be true that the amount of available cash to meet the same was only the sum of $36,979.78, and say that they

have been informed and believe and aver it to be true that the amount of available cash and items equivalent to cash was about the sum of $49,000.00.

And these defendants further severally answering say, that they have been informed and believe it to be true that negotiations were then (to-wit, in December, 1895) entered into by certain officers of the bank, (to-wit: the American National Bank) with the Union National Bank of Omaha, Nebraska, for a transfer of the business of the said American National Bank to the said Union National Bank, and to ascertain whether or not some arrangement could be entered into whereby the immediate obligations of the American National Bank should be paid.

These defendants further severally answering say, that they have been informed and believe it to be true, that as a result of the negotiations mentioned above and by and under the direction of the Board of Directors of the said American National Bank, as hereinafter more fully set forth, and the Board of Directors of the said Union National Bank, the name of the American National Bank was affixed to an instrument, purporting to be a contract between said banks, by Thomas L. Kimball, who was then president of the American National Bank, and attested by the defendant Henry F. Wyman, who was then cashier of the said American National Bank, and was signed by William W. Marsh, President, and attested by Charles E. Ford, cashier respectively of said Union Na-
71 tional Bank; and believe that a copy thereof is attached to said amended bill; but these defendants for greater certainty therein pray leave to refer to said writing when the same shall be produced.

And these defendants further severally answering say, that they had been informed and believe it to be true, that immediately after the signing of said agreement the transfer of the business of the said American National Bank was made to the said Union National Bank, pursuant to said agreement, and that the said Union National Bank at once assumed the payment of all the liabilities of the said American National Bank to its depositors and on account of its bills payable, but further say that they do not know and have not been informed save by the said complainant's said amended bill, whether or not the said Union National Bank long prior to the commencement of this action has paid all of such deposits in full, and therefore deny that it has.

And these defendants further severally answering say, that they do not know and can not set forth as to their belief or otherwise whether the items of liabilities alleged in said

amended bill to have been assumed by the Union National Bank and the items in cash, drafts and notes alleged to have been received by the Union National Bank from the American National Bank are fully and truly set forth therein, and whether or not a cashier's check of $39,929.51 was received by said Union National Bank from said American National Bank and whether or not the same was paid by turning over to the said Union National Bank notes for $22,299.10 and a cashier's check for $17,000.00, and whether or not the same was afterwards paid by the American National Bank, but admit that a cashier's check for some amount was received by said Union National Bank from said American National Bank which check was paid by turning over to the said Union National Bank notes for an amount unknown to these respondents and a cashier's check for an amount unknown to these defendants, which check was afterwards paid by the American National Bank.

72 These defendants further severally answering say, that they deny that the liabilities of the said American National Bank assumed by the said Union National Bank in excess of the assets of the said American National Bank taken and accepted by the Union National Bank as cash and without recourse, pursuant to the alleged agreement therein set forth, amounted to the sum of $201,000.00.

And these defendants further severally answering say, that they deny that the American National Bank executed and delivered to the Union National Bank the three notes mentioned in said amended bill but further say, that they have been informed and believe it to be true, that on the 23rd day of December, 1895, the said Thomas L. Kimball, who was then president of said American National Bank, executed and delivered to said Union National Bank three promissory notes in the name of the American National Bank as maker, each of said notes being for the sum of $67,000.00 and bearing interest at the rate of six per cent per annum from date, one of said notes maturing in one year from its date, one in two years from its date and one in three years from its date.

And these defendants further severally answering say, that they deny that the balance of the assets of the said American National Bank, being all of the assets of the said American National Bank not taken by the said Union National Bank as cash and without recourse and in pursuance to and in performance of said agreement, were turned over to one Thomas L. Kimball as trustee of the parties to said agreement to collect and convert the same into cash for the uses and pur-

poses expressed in said agreement, but say that the balance of the assets of said American National Bank were
73 turned over to said Union National Bank pursuant to the terms of said agreement to liquidate the same.

And these defendants further severally answering say that they do not know and have not been informed save by said complainant's said amended bill and cannot set forth as to their belief or otherwise, whether on the 8th day of August 1898 the said Union National Bank sold, assigned and transferred said note due in one year from date to said plaintiff for a valuable consideration and whether or not said plaintiff is and was at the commencement of this action the legal owner and holder thereof, and whether or not a copy of said note with endorsements thereon is fully set forth in said amended bill, and therefore deny the same.

These defendants further severally answering say, that they deny on information and belief that there is now due and owing on said note to said plaintiff from the American National Bank the sum of $———— or any sum whatsoever, and also deny on information and belief that the Union Natianal Bank is a creditor of said American National Bank and that said Union National Bank is still the owner and holder of the two other notes in said amended bill described.

And these defendants further severally answering say, that they admit that they were advised of the situation and condition of the said American National Bank and of its possible and contingent inability to pay its depositors and liabilities at the time of the making of the agreement and notes set out in said amended bill, and admit that, if such contingencies had arisen, unless some arrangement was made to procure assistance for said American National Bank, the said bank could not pay its depositors immediately and that the loss under such circumstances would be very great; but deny that the liability of the stockholders would be greatly increased.

74 And these defendants further severally answering say, that it is not true and they deny that they or either of them had any knowledge of the condition and liability of said American National Bank, as alleged in said bill, and that it is not true and they deny that they or either of them accepted and received the benefits of such contract and ratified and affirmed the same, and that it is not true and they deny that they or either of them, except as hereinafter set forth, allowed and permitted the Union National Bank to pay out the said sums of money alleged in said amended bill to have been

paid by the Union National Bank to the depositors of said American National Bank, and that it is not true and they deny that they or either of them induced the Union National Bank to pay out the said sums of money alleged in said amended bill to have been paid by the Union National Bank to the depositors of the said American National Bank, and that it is not true and they deny that they or either of them accepted the benefits of said agreement and the payments of the same.

And these defendants further severally answering say, that it is not true and they deny it to be a fact that by means of the actions and inducements of the officers and agents of the American National Bank and by means of the execution of said notes and contract alleged in said amended bill to have been made by and with the consent, procurement and inducement of the said stockholders (which consent, procurement and inducement these defendants deny), the defendants herein, or these defendants or either of them, and with the knowledge and consent of the said defendants or of these defendants or either of them, procured the Union National Bank to advance the money to pay off the liabilities of the American National Bank and procured the Union National Bank to expend large sums of money to pay off and satisfy said liabilities of
75 said American National Bank, and further say that it is not true and they deny it to be a fact that by means of such contract and notes the said defendants or either of them procured the said Union National Bank to expend the sum of $280,000.00 or any sum whatsoever in extinguishing, paying off and settling the obligations of the said American National Bank.

These defendants further severally answering say, that it is not a fact, and they deny it to be a fact, that these defendants or either of them was advised of the negotiations during the time the same were pending, except as aforesaid, and the purpose and design of such negotiations and acquiesced in the same and consented thereto, except as aforesaid.

And these defendants further severally answering say, that they deny that at the time of the giving of the notes described in said amended bill the said American National Bank delivered to said Thomas L. Kimball, as trustee, certain notes and property as security to the notes sued on therein and other notes given to the said Union National Bank at the same time, and that said trustee was to collect said security and apply the proceeds thereof to the payment of said notes, but admit that certain notes and property were at or about that time turned over to the Union National Bank to be liquidated and applied to the payment of said notes.

And these defendants further severally answering say, that they admit that said Thomas L. Kimball, has since the commencement of this suit deceased, but respectfully say that this court did not have any jurisdiction or authority to appoint James Burness as successor to said Thomas L. Kimball as trustee under said alleged contract, and further say that they do not know and have not been informed save by the
76 said complainant's said amended bill and cannot set forth as to their belief or otherwise, whether such assets have in fact all been turned over to said Burness.

And these defendants further severally answering say, that they deny on information and belief that the American National Bank on the 14th day of January, 1896, or at any other time, went into voluntary liquidation under the provisions of Sec. 5220 of the Revised Statutes of the United States, but admit on information and belief that since said time the said corporation, the American National Bank, has not done any banking business.

And these defendants further severally answering say, that they deny that said plaintiff is a creditor of the said American National Bank.

And these defendants further severally answering say, that they admit that the said American National Bank was capitalized for the sum of $200,000.00 divided into shares of $100.00 each, making in all 2000 shares of stock issued by the said bank.

And these defendants further severally answering say, that they do not know and have not been informed save by the said complainant's said amended bill, and cannot set forth as to their belief or otherwise, whether the said plaintiff has or has not made defendants in this action all of the shareholders of said American National Bank in so far as he has been able to ascertain the names thereof, but for the purposes of this action admit that he has.

And these defendants further severally answering say, that they admit that the said Charles C. George, Henry F. Wyman, Albert U. Wyman, and Morris Levy were at the times mentioned in said amended bill and still are shareholders of the said American National Bank to the number respectively of fifteen and fifty-eight & one-fourth and ten and fifty shares, as stated in said amended bill.

77 And these defendants further severally answering say, that they admit on information and belief that the other defendants named in said amended bill were the owners and holders of the number of shares set opposite their names respectively therein.

And these defendants further severally answering say, that it is not true and they deny that the said American National Bank at the time it is alleged it went into voluntary liquidation and during the months of December, 1895, and January, 1896, and for a long time prior thereto, was wholly insolvent and unable to pay its creditors, and that said American National Bank has ever since remained and still is wholly insolvent and unable to pay its creditors.

And these defendants further severally answering say, that they deny that this action is brought against the said American National Bank and its stockholders jointly under and through any authority granted by the laws of the United States relating to banking.

These defendants further severally answering say, that they admit that under and by virtue of the banking laws of the United States, each and every of said shareholders is held individually responsible equally and ratably, and not one for another, for all contracts, debts and engagements of the said American National Bank to the extent of the amount of his, her or its stock therein, at the par value thereof, in addition to the amount invested in such shares; but aver that such indebtedness or liability is limited to valid contracts, debts and engagements incurred and entered into by said bank in the usual and ordinary course of the business of banking; and deny that each and every or any of the stockholders of the said American National Bank, and each and every or any of
78 the respondents named in said amended bill as stockholders, are liable for the payment of the claim of plaintiff and of the claim of the said Union National Bank to the amount of stock so held by said defendants or to any other amount or to any extent whatsoever.

And these defendants further severally answering say, that the Articles of Association of the defendant, the American National Bank of Omaha, provided that the Board of Directors of said bank should have authority to elect a President, Vice-President and such other officers and clerks as might be required to transact the business of such Association, to fix the salaries of such officers and clerks, to dismiss such officers and clerks, to define the duties of such officers and clerks, and "generally, to do and perform all the acts that may be legal for a Board of Directors to do under the Revised Statutes aforesaid", to-wit: the Revised Statutes of the United States.

That section 14 of the By-Laws of said defendant, the American National Bank of Omaha, provided that special meetings

of the Board of Directors might "be called by the President, Cashier or at the request of three or more directors."

That at a regular annual meeting of the stockholders of said defendant, the American National Bank of Omaha, held January 8, 1895, nine persons were elected to serve as directors of said bank in accordance with the Articles of Association and By-laws of said bank.

That at a special meeting of the directors of said defendant, the American National Bank of Omaha, held on the 21st day of December, 1895, at which meeting there were present six out of the nine directors of said Association and of
79 which special meeting no notice had been given to the three directors not present, the following resolution was moved, seconded, and unanimously adopted, to-wit:

"Whereas, the officers of this bank and the officers of the Union National Bank of Omaha, Nebraska, have negotiated and agreed upon the sale of this bank to the Union National Bank of the business and assets of this bank on the terms and conditions embodied in the agreement, of which the following is a copy:

Agreement:

This indenture witnesseth. That the American National Bank a corporation of Omaha, Nebraska, hereinafter designated party of the first part, has and by these presents does hereby agree, for the considerations hereinafter expressed, to and with Union National Bank, a corporation, of Omaha, Nebraska, hereinafter designated party of the second part, as follows, to-wit:

First: The party of the first part hereby agrees to sell and assign and does hereby sell and assign to the second party the business of the party of the first part, its cash on hand, office furniture and fixtures and such of its bills receivable as the party of the second part on examination may be willing to take as cash without recourse on the party of the first part.

Second: The party of the second part hereby agrees to purchase and does purchase from the party of the first part the business of the party of the first part, cash on hand, office furniture and fixtures, and such bills receivable as the party of the second part may be willing to take as cash on examination of the same without recourse on the party of the first part and to pay the party of the first part for said office fur-
80 niture and fixtures the sum of Three Thousand Seven Hundred and Fifty ($3,750.00), and to assume the lia-

bilities of the party of the first part to its depositors and on account of its bills payable and to liquidate the remaining assets of the party of the first part which may not be taken and received as cash by the party of the second part without charge or expense to the party of the first part, except such court charges and attorneys' fees as may be found necessary and that such liquidation shall be conducted under the direction of Thomas L. Kimball or such other person as may be agreed upon on behalf of the stockholders of the party of the first part, it being understood and agreed that said Kimball or his successor shall represent in said liquidation the stockholders of the party of the first part, and shall receive, hold and use the proceeds of the assets of the party of the first part as trustee of the parties hereto for the mutual protection of the rights of each in accordance with the terms and conditions of this agreement, and that all necessary court be incurred under the direction of the said Kimball, or his charges and attorneys' fees attending said liquidation shall successor.

Third: In consideration of the above agreement of the party of the second part, the party of the first part hereby agrees to sustain and pay one half of the loss and expense which the party of the second part may sustain on account of removal from its present quarters by reason of its unexpired lease on its present place of business and one half of the loss which the party of the second part may sustain on the sale of its office furniture and fixtures, which furniture and fixtures are agreed upon at the present price and value of Three Thousand Seven Hundred and Fifty ($3750.00) Dollars, and the party of the first part further agrees to guarantee and does hereby guarantee the party of the second part against any and
81 all loss on account of assuming the liabilities of the party of the first part as aforesaid. And to this end the party of the first part agrees to execute and deliver to the party of the second part its three promissory notes of equal sums for the amount of liabilities which the party of the second part may assume after crediting the full amount of cash on hand and bills receivable and other assets which may be accepted by the party of the second part on examination, which notes shall draw interest from date at the rate of six per cent per annum, payable quarter annually, and be payable in one, two and three years from date respectively, and shall be non-negotiable. And in case of non-payment of any of said notes when due the whole of said principal sums of all of said notes and accrued interest shall thereupon become due.

And as further security to the party of the second part the party of the first part agrees to sell and assign and does hereby sell and assign to the party of the second part all of its assets which may remain after the selection therefrom by the party of the second part heretofore mentioned, including all its bills receivable, stocks, bonds, personal property of every kind and all real estate and interests therein or liens thereon, with the understanding and agreement that the party of the second part shall have and hold said assets and properties subject to the right of said Thomas L. Kimball, or his successor, to collect and convert the same into cash for the uses and purposes hereinbefore expressed.

And it is further agreed that the party of the first part may pay and have credited on said notes at any time prior
82 to maturity any sums of money of Five Hundred ($500.00) Dollars, and upwards, provided the sums so paid shall be in even hundreds.

Witness the names and corporate seals of the parties hereto this 21st day of December, A. D. 1895.

Now therefore, resolved that the foregoing agreement be and the same is hereby ratified and confirmed and that the officers of the bank be and are hereby authorized and directed to execute said agreement and carry the same into effect for and on behalf of this bank, and that the officers of this bank be and are hereby authorized to execute and deliver to the Union National Bank the notes of this bank in the sums which may be required to comply with the terms of the foregoing agreement."

That thereupon on said 21st day of December, the said Thomas L. Kimball, who was then president of said American National Bank, entered into an agreement in the name of said American National Bank of Omaha with the defendant, the Union National Bank of Omaha, and which agreement was attested by the defendant, Henry F. Wyman, who was then the cashier of said American National Bank, a copy of which is, as these defendants are informed and believe, attached to plaintiff's amended bill as "Exhibit A", and these defendants for greater certainty therein pray leave to refer to the original thereof, when the same shall be produced.

That immediately after the execution and delivery of said agreement and pursuant thereto, and to said resolution, said Thomas L. Kimball and Henry F. Wyman delivered and turned over to said Union National Bank all of the assets then owned by said American National Bank and that said Union National Bank and said Thomas L. Kimball, thereupon took

complete and exclusive possession and control of such assets and proceeded to and did reduce certain portions thereof (but
what and how much are unknown to these defendants)
83 to cash; that whatever payments have been made upon
any of the three notes mentioned in said amended Bill of Complaint have been made out of such assets so transferred and delivered; and that the assets of the American National Bank so turned over and delivered to the said Union National Bank, not including the business, cash on hand, office furniture and fixtures and bills receivable accepted by the said Union National Bank as cash, were of the nominal or face value of about $400,000.00, and of these assets there remained in the hands of the said Union National Bank and said Thomas L. Kimball up to the time of his death and now remain in the hands of said Union National Bank and said James Burness assets of the nominal or face value of about the sum of $371,000.00, which have not been liquidated or converted into money or in any manner applied upon the plaintiff's said claim.

That immediately after the execution and delivery of said instrument, said Union National Bank of Omaha removed from its former place of business, to-wit: on the southeast corner of 16th and Dodge Streets in the City of Omaha, to the place of business of the American National Bank, to-wit: on the northwest corner of 15th and Dodge Streets in said city, and took possession of and has ever since retained possession of the office furniture and fixtures of said American National Bank and its said place of business, leaving its own office furniture and fixtures in the place of business theretofore occupied by it and by its removal left vacant for a long time thereafter, and that said office furniture and fixtures of said Union National Bank were not as valuable as said office furniture and fixtures
of said American National Bank.

84 That afterwards, on the 25th day of December, 1895,
the said defendant, Thomas L. Kimball, who was then president of said American National Bank, executed and delivered to the said Union National Bank, three promissory notes in the name of the said American National Bank, as maker, for the sum of $67,000.00 each, due in one, two and three years respectively, and of which said three notes the note set out in plaintiff's amended bill is the one first maturing.

That at the times mentioned in said amended bill and at the time herein mentioned there were and still are persons, other than said Union National Bank and said plaintiff, who were and still are creditors of said American National Bank.

And these defendants further severally answering say, that no proceedings have been had at law upon the three notes

above mentioned or either of them and that said plaintiff has not reduced his said claim founded upon the note set out in his amended bill to judgment in any court.

And these defendants further severally answering say, that they are informed and believe it to be true, and therefor, aver that by reason of the facts hereinbefore set forth these defendants are not and cannot be held liable under the laws of the United States for the payment of said notes or any portion thereof.

Wherefore, these defendants severally humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

Howard B. Smith,
Of Counsel.

CHARLES C. GEORGE,
HENRY F. WYMAN,
ALBERT U. WYMAN, and
MORRIS LEVY,
By Howard B. Smith,
Their Solicitor.

Indorsed: Filed Feb. 4, 1901, Geo. H. Thummel, Clerk.

85 Thereupon afterwards, to-wit: On the 4th day of February, 1901, Joint and Several Answer of Elmer C. Brownlee, Peter Frenzer, John N. Frenzer, Howard B. Smith and George G. Wallace, was filed in said case, which said Answer is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

Sumner Wallace, Plaintiff,
Doc. "T". vs. No. 261. In Equity.
The American National Bank, et al., Defendants.

The joint and several answer of Elmer C. Brownlee, Peter Frenzer, John N. Frenzer, and Howard B. Smith and George G. Wallace, five of the defendants, to the amended bill of Complaint of Sumner Wallace.

These defendants respectively, now and at all times hereafter reserving to themselves all right of exception to said complainant's said amended Bill of Complaint, for answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, say:

That they severally admit that the American National Bank and the Union National Bank are corporations organized under

and by virtue of the banking laws of the United States for the purpose of doing business in the City of Omaha, Douglas County, Nebraska; deny that said banks are within the jurisdiction of the Circuit Court of the United States within and for the District of Nebraska as national banks; admit that each of these answering defendants is a resident and citizen
86 of the State of Nebraska; admit that the plaintiff is a resident and citizen of the state therein set forth; and admit that all of the parties were at the time of the filing of the bill in this cause, and still are, residents and citizens as in said amended bill averred, except Alfred R. Dufrene and Thomas L. Kimball, who have since deceased, and James J. Brown, Jr., who died before said original bill was filed.

And these defendants further severally answering say, that they deny that it is true that in the year of 1894, until December, 1895, the said Union National Bank and the said American National Bank by means of their officers and agents held repeated conferences with respect to the taking over of the business and office fixtures of the American National Bank by said Union National Bank and the terms under which the said arrangement could be consummated, and deny that numerous meetings were held between the prominent stockholders of the two said banks with that end in view.

And these defendants further severally answering say, that they deny that in the month of December, 1895, the American National Bank aforesaid was in such a financial condition that it became necessary for it to provide in some manner for the payment of a large amount of its deposits on or about January 1st, 1896, and deny that it did not have on hand sufficient funds with which to meet the demands which it knew would be made upon it at that time.

87 And these defendants further severally answering say, that they have been informed and believe it to be true, that the amount of deposits at said time, and for which the bank was liable upon call, was the sum of $193,949.78, but deny it to be true that the amount of available cash to meet the same was only the sum of $36,979.78, and say that they have been informed and believe and aver it to be true that the amount of available cash and items equivalent to cash was about the sum of $49,000.00.

And these defendants further severally answering say, that they have been informed and believe it to be true that negotiations were then (to-wit, in December, 1895) entered into by the officers of the bank, (to-wit: the American National Bank) with the Union National Bank of Omaha, Nebraska; for a transfer of the business of the said American National Bank

to the said Union National Bank, and to ascertain whether or not some arrangement could be entered into whereby the immediate obligations of the American National Bank should be paid.

These defendants further severally answering say, that they have been informed and believe it to be true, that as a result of the negotiations mentioned above and by and under the direction of the Board of Directors of the said American National Bank, as hereinafter more fully set forth, and the Board of Directors of the said Union National Bank, the name of the American National Bank was affixed to an instrument, purporting to be a contract between said banks, by Thomas L. Kimball, who was then president of the American National Bank, and attested by the defendant Henry F. Wyman, who was then cashier of the said American National Bank, and was signed by William W. Marsh, President, and attested by Charles E. Ford, cashier respectively of said Union Na-
88 tional Bank; and believe that a copy thereof is attached to said amended bill; but these defendants for greater certainty therein pray leave to refer to said writing when then same shall be produced.

And these defendants further severally answering say, that they have been informed and believe it to be true, that immediately after the signing of said agreement the transfer of the business of the said American National Bank was made to the said Union National Bank, pursuant to said agreement, and that the said Union Naional Bank at once assumed the payment of all the liabilities of the said American National Bank to its depositors and on account of its bills payable, but further say that they do not know and have not been informed save by the said complainant's said amended bill, whether or not the said Union National Bank long prior to the commencement of this action has paid all of such deposits in full, and therefore deny that it has.

And these defendants further severally answering say, that they do not know and have not been informed save by said complainant's said amended bill and cannot set forth as to their belief or otherwise whether the items of liabilities alleged in said amended bill to have been assumed by the Union National Bank and the items in cash, drafts and notes alleged to have been received by the Union National Bank from the American National Bank are fully and truly set forth therein, and whether or not a cashier's check of $39,929.51 was received by said Union National Bank from said American National Bank and whether or not the same was paid by turning over to the said Union National Bank notes for $22,299.10 and a

cashier's check for $17,000.00 and whether or not the same was afterwards paid by the American National Bank.

89 These defendants further severally answering say, that they deny that the liabilities of the said American National Bank assumed by the said Union National Bank in excess of the assets of the said American National Bank taken and accepted by the Union National Bank as cash and without recourse, pursuant to the alleged agreement therein set forth, amounted to the sum of $201,000.00.

And these defendants further severally answering say, that they deny that the American National Bank executed and delivered to the Union National Bank the three notes mentioned in said amended bill but further say, that they have been informed and believe it to be true, that on the 23rd day of December, 1895, the said Thomas L. Kimball, who was then president of said American National Bank, executed and delivered to said Union National Bank three promissory notes in the name of the American National Bank as maker, each of said notes being for the sum of $67,000.00 and bearing interest at the rate of six per cent per annum from date, one of said notes maturing in one year from its date, one in two years from its date and one in three years from its date.

And these defendants further severally answering say, that they deny that the balance of the assets of the said American National Bank, being all of the assets of the said American National Bank not taken by the said Union National Bank as cash and without recourse and in pursuance to and in performace of said agreement, were turned over to one Thomas L. Kimball as trustee of the parties to said agreement to collect and convert the same into cash for the uses and purposes expressed in said agreement, but say that the balance of the assets of said American National Bank were turned over to
90 said Union National Bank pursuant to the terms of said agreement to liquidate the same.

And these defendants further severally answering say that they do not know and have not been informed save by said complainant's said amended bill and cannot set forth as to their belief or otherwise, whether on the 8th day of August 1898 the said Union National Bank sold, assigned and transferred said note due in one year from date to said plaintiff for a valuable consideration and whether or not said plaintiff is and was at the commencement of this action the legal owner and holder thereof, and whether or not a copy of said note with endorsements thereon is fully set forth in said amended bill, and therefore deny the same.

These defendants further severally answering say, that they deny on information and belief that there is now due and owing on said note to said plaintiff from the American National Bank the sum of $..... or any sum whatsoever, and also deny on information and belief that the Union National Bank is a creditor of said American National Bank and that said Union National Bank is still the owner and holder of the two other notes in said amended bill described.

And these defendants further severally answering say, that it is not true and they deny that these defendants were or either of them was advised of the situation and condition of the said American National Bank with respect to its alleged inability to pay its depositors and liabilities at the time of the making the agreement and notes set out in said amended bill and that it is not true and they deny that unless some arrangement was made to procure assistance for said American National Bank the said Bank could not pay its depositors and that the loss under such circumstances would be very great, and that the liability of the stockholders would be greatly increased.

91 And these defendants further severally answering say, that it is not true and they deny that they or either of them had any knowledge of the alleged conditions and liability of said American National Bank, and that it is not true and they deny that they or either of them accepted and received the benefits of such contract and ratified and affirmed the same, and that it is not true and they deny that they or either of them allowed, permitted and induced the Union National Bank to pay out the said sums of money alleged in said amended bill to have been paid by the Union National Bank to the depositors of said American National Bank, and that it is not true and they deny that they or either of them accepted the benefits of said agreement and the payments of the same.

These defendants further severally answering say, that it is not true and they deny it to be a fact, that by means of the actions and inducements of the officers and agents of the American National Bank (if any such there were, which they deny) and by means of the execution of said notes and contract alleged in said amended bill to have been made by and with the consent, procurement and inducement of the said stockholders (which consent, procurement and inducement these defendants deny), the defendants herein, or these defendants or either of them, and with the knowledge and consent of the said defendants, or of these defendants or either of them, procured the Union National Bank to advance the

money to pay off the liabilities of the American National Bank and procured the Union National Bank to expend large sums
of money to pay off and satisfy said liabilities of said
92 American National Bank, and further say that it is not
true and they deny it to be a fact that by means of such contract and notes the said defendants or either of them procured the said Union National Bank to expend the sum of over $280,000.00 or any sum whatsoever in extinguishing, paying off or settling the obligations of the said American National Bank.

And these defendants further severally answering say, that it is not a fact and they deny it to be a fact, that these defendants were or either of them was advised of the negotiations during the time the same were pending, and the purpose and design of such negotiations and acquiesced in the same and consented thereto.

And these defendants further severally answering say, that they deny that at the time of the giving of the notes described in said amended bill the said American National Bank delivered to said Thomas L. Kimball, as trustee, certain notes and property as security to the notes sued on therein and other notes given to the said Union National Bank at the same time, and that said trustee was to collect said security and apply the proceeds thereof to the payment of said notes, but admit that certain notes and property were at or about that time turned over to the Union National Bank to be liquidated and applied to the payment of said notes.

And these defendants further severally answering say, that they admit that said Thomas L. Kimball has since the commencement of this suit deceased, but respectfully say that this court did not have any jurisdiction or authority to appoint James Burness as successor to said Thomas L. Kimball as trustee under said alleged contract, and further say that they
do not know and have not been informed save by the
93 said complainant's said amended bill and cannot set
forth as to their belief or otherwise, whether such assets have in fact all been turned over to said Burness.

And these defendants further severally answering say, that they deny on information and belief that the American National Bank on the 14th day of January, 1896, or at any other time, went into voluntary liquidation under the provisions of Sec. 5220 of the Revised Statutes of the United States, but admit on information and belief that since said time the said corporation, the American National Bank, has not done any banking business.

And these defendants further severally answering say, that they deny that said plaintiff is a creditor of the said American National Bank.

And these defendants further severally answering say, that they admit that the said American National Bank was capitalized for the sum of $200,000.00 divided into shares of $100.00 each, making in all 2000 shares of stock issued by the said bank.

And these defendants further severally answering say, that they do not know and have not been informed save by the said complainant's said amended bill, and cannot set forth as to their belief or otherwise, whether the said plaintiff has or has not made defendants in this action all of the shareholders of said American National Bank in so far as he has been able to ascertain the names thereof, but for the purpose of this action admit that he has.

These defendants further severally answering say, that they admit that the said Elmer C. Brownlee and Peter Frenzer and John N. Frenzer and Howard B. Smith and George G. Wallace, were, at the times mentioned in said amended Bill and still are shareholders of the said American National Bank to the number respectively of ten and fifteen and five and fifty and seventy-five shares as stated in said amended bill.

94 And these defendants further severally answering say, that they admit on information and belief that the other defendants named in said amended bill were the owners and holders of the number of shares set opposite their names respectively therein.

And these defendants further severally answering say, that it is not true and they deny that the said American National Bank at the time it is alleged it went into voluntary liquidation and during the months of December 1895 and January, 1896, and for a long time prior thereto, was wholly insolvent and unable to pay its creditors, and that said American National Bank has ever since remained and still is wholly insolvent and unable to pay its creditors.

And these defendants further severally answering say, that they deny that this action is brought against the said American National Bank and its stockholders jointly under and through any authority granted by the laws of the United States relating to banking.

These defendants further severally answering say, that they admit that under and by virtue of the banking laws of the United States, each and every of said shareholders is held

individually responsible equally and ratably, and not one for another, for all contracts, debts and engagements of the said American National Bank to the extent of the amount of his, her or its stock therein, at the par value thereof, in addition to the amount invested in such shares; but aver that such indebtedness or liability is limited to valid contracts, debts and engagements incurred and entered into by said bank in the usual and ordinary course of the business of banking; and deny that each and every or any of the stockholders of the said American National Bank, and each and every
95 or any of the respondents named in said amended bill as stockholders, are liable for the payment of the claim of plaintiff and of the claim of the said Union National Bank to the amount of stock so held by said defendants or to any other amount or to any extent whatsoever.

And these defendants further severally answering say, that the Articles of Association of the defendant, the American National Bank of Omaha, provided that the Board of Directors of said bank should have authority to elect a President, Vice-President and such other officers and clerks as might be required to transact the business of such Association, to fix the salaries of such officers and clerks, to dismiss such officers and clerks, to define the duties of such officers and clerks, and "generally, to do and perform all the acts that may be legal for a Board of Directors to do under the Revised Statutes aforesaid", to-wit: the Revised Statutes of the United States.

That section 14 of the By-Laws of said defendant, the American National Bank of Omaha, provided that special meetings of the Board of Directors might "be called by the President, Cashier or at the request of three or more directors."

That at a regular annual meeting of the stockholders of said defendant, the American National Bank of Omaha, held January 8, 1895, nine persons were elected to serve as directors of said bank in accordance with the Articles of Association and By-laws of said bank.

That at a special meeting of the directors of said defendant, the American National Bank of Omaha, held on the 21st day of December, 1895, at which meeting there were present six out of the nine directors of said Association and of
96 which special meeting no notice had been given to the three directors not present, the following resolution was moved, seconded, and unanimously adopted, to-wit:

"Whereas, the officers of this bank and the officers of the Union National Bank of Omaha, Nebraska, have negotiated

and agreed upon the sale of this bank to the Union National Bank of the business and assets of this bank on the terms and conditions embodied in the agreement, of which the following is a copy:

Agreement:

This indenture witnesseth, That the American National Bank a corporation of Omaha, Nebraska, hereinafter designated party of the first part, has and by these presents does hereby agree, for the considerations hereinafter expressed, to and with Union National Bank, a corporation, of Omaha, Nebraska, hereinafter designated party of the second part, as follows, to-wit:

First: The party of the first part hereby agrees to sell and assign and does hereby sell and assign to the second party the business of the party of the first part, its cash on hand, office furniture and fixtures and such of its bills receivable as the party of the second part on examination may be willing to take as cash without recourse on the party of the first part.

Second: The party of the second part hereby agrees to purchase and does purchase from the party of the first part the business of the party of the first part, cash on hand, office furniture and fixtures, and such bills receivable as the party of the second part may be willing to take as cash on examination of the same without recourse on the party of the first part and to pay the party of the first part for said office furniture and fixtures the sum of Three Thousand Seven
97 Hundred and Fifty ($3750.00), and to assume the liabilities of the party of the first part to its depositors and on account of its bills payable and to liquidate the remaining assets of the party of the first part which may not be taken and received as cash by the party of the second part without charge or expense to the party of the first part, except such court charges and attorneys' fees as may be found necessary and that such liquidation shall be conducted under the direction of Thomas L. Kimball or such other person as may be agreed upon on behalf of the stockholders of the party of the first part, it being understood and agreed that said Kimball or his successor shall represent in said liquidation the stockholders of the party of the first part, and shall receive, hold and use the proceeds of the assets of the party of the first part as trustee of the parties hereto for the mutual protection of the rights of each in accordance with the terms and conditions of this agreement, and that all necessary court

charges and attorneys' fees attending said liquidation shall be incurred under the direction of the said Kimball, or his successor.

Third: In consideration of the above agreement of the party of the second part, the party of the first part hereby agrees to sustain and pay one half of the loss and expense which the party of the second part may sustain on account of removal from its present quarters by reason of its unexpired lease on its present place of business and one half of the loss which the party of the second part may sustain on the sale of its office furniture and fixtures, which furniture and fixtures are agreed upon at the present price and value of Three Thousand Seven Hundred and Fifty ($3750.00) Dollars, and the party of the first part further agrees to guarantee and does hereby guarantee the party of the second part against any and all loss on account of assuming the liabilities of the party of the first part as aforesaid. And to this end the party of the first part agrees to execute and deliver to the party of the second part its three promissory notes of equal sums for the amount of liabilities which the party of the second part may assume after crediting the full amount of cash on hand and bills receivable and other assets which may be accepted by the party of the second part on examination, which notes shall draw interest from date at the rate of six per cent per annum, payable quarter annually, and be payable in one, two and three years from date respectively, and shall be non-negotiable. And in case of non-payment of any of said notes when due the whole of said principal sums of all of said notes and accrued interest shall thereupon become due.

98

And as further security to the party of the second part the party of the first part agrees to sell and assign and does hereby sell and assign to the party of the second part all of its assets which may remain after the selection therefrom by the party of the second part hereinbefore mentioned, including all its bills receivable, stocks, bonds, personal property of every kind and all real estate and interests therein or liens thereon, with the understanding and agreement that the party of the second part shall have and hold said assets and properties subject to the right of said Thomas L. Kimball, or his successor, to collect and convert the same into cash for the uses and purposes hereinbefore expressed.

And it is further agreed that the party of the first part may pay and have credited on said notes at any time prior to maturity any sums of money of Five Hundred ($500.00) Dollars, and upwards, provided the sums so paid shall be in even hundreds.

99

Witness the names and corporate seals of the parties hereto this 21st day of December, A. D. 1895.

Now therefore, resolved that the foregoing agreement be and the same is hereby ratified and confirmed and that the officers of the bank be and are hereby authorized and directed to execute said agreement and carry the same into effect for and on behalf of this bank, and that the officers of this bank be and are hereby authorized to execute and deliver to the Union National Bank the notes of this bank in the sums which may be required to comply with the terms of the foregoing agreement."

That thereupon on said 21st day of December, 1895, the said Thomas L. Kimball, who was then president of said American National Bank, entered into an agreement in the name of said American National Bank of Omaha with the defendant, the Union National Bank of Omaha, and which agreement was attested by the defendant, Henry F. Wyman, who was then the cashier of said American National Bank, a copy of which is, as these defendants are informed and believe, attached to plaintiff's amended bill as "Exhibit A", and these defendants for greater certainty therein pray leave to refer to the original thereof, when the same shall be produced.

That immediately after the execution and delivery of said agreement and pursuant thereto, and to said resolution, said Thomas L. Kimball and Henry F. Wyman delivered and turned over to said Union National Bank all of the assets then owned by said American National Bank and that said Union National Bank and said Thomas L. Kimball, thereupon took complete and exclusive possession and control of such assets and proceeded to and did reduce certain portions thereof (but what and how much are unknown to these defendants) to cash; that
100 whatever payments have been made upon any of the three notes mentioned in said amended Bill of Complaint have been made out of such assets so transferred and delivered; and that the assets of the American National Bank so turned over and delivered to the said Union National Bank, not including the business, cash on hand, office furniture and fixtures and bills receivable accepted by the said Union National Bank as cash, were of the nominal or face value of about $400,000.00, and of these assets there remained in the hands of the said Union National Bank and said Thomas L. Kimball up to the time of his death and now remain in the hands of said Union National Bank and said James Burness assets of the nominal or face value of about the sum of $371,000.00, which have not been liquidated or converted into money or in any manner applied upon the plaintiff's said claim.

That immediately after the execution and delivery of said instrument, said Union National Bank of Omaha removed from its former place of business, to-wit: on the southeast corner of 16th and Dodge Streets in the City of Omaha, to the place of business of the American National Bank, to-wit: on the northwest corner of 15th and Dodge Streets in said city, and took possession of and has ever since retained possession of the office furniture and fixtures of said American National Bank and its said place of business, leaving its own office furniture and fixtures in the place of business theretofore occupied by it and by its removal left vacant for a long time thereafter, and that said office furniture and fixtures of said Union National Bank were not as valuable as said office furniture and fixtures of said American National Bank.

101 That afterwards, on the 25th day of December, 1895, the said defendant, Thomas L. Kimball, who was then president of said American National Bank, executed and delivered to the said Union National Bank, three promissory notes in the name of the said American National Bank, as maker, for the sum of $67,000.00 each, due in one, two and three years respectively, and of which said three notes the note set out in plaintiff's amended bill is the one first maturing.

That at the times mentioned in said amended bill and at the time herein mentioned there were and still are persons, other than said Union National Bank and said plaintiff, who were and still are creditors of said American National Bank.

That the directors present at said special directors' meeting were Thomas L. Kimball, holding 10 shares of the stock of said bank, William Baird, holding 10 shares, Charles C. George, holding 15 shares, M. Levy, holding 50 shares, Alfred R. Dufrene, holding 75 shares and A. U. Wyman, holding 10 shares; that said Thomas L. Kimball had on deposit on said day to his credit in said American National Bank an amount in excess of $15,000.00; that said M. Levy had on deposit on said day in said bank to his own credit an amount in excess of $150.00 and the Nebraska Clothing Company, of which said Levy was president and manager and in which he was a large shareholder, had on deposit on said day to its credit in said bank an amount in excess of $19,000.00; and that said Alfred R. Dufrene had on deposit on said day in said bank to his credit an amount in excess of $2,000.00 and Mrs. A. R. Dufrene, his wife, had on deposit in said bank on said day to her credit an amount in excess of $2,300.00; that said William Baird at said time was a partner in the firm of Wharton & Baird and said Baird was individually and as a member of said
102 partnership the attorney for William Minot and the representative in said bank of said Minot's interests and

that said Wharton & Baird had on deposit to their credit in said bank on said day an amount exceeding $700.00 and were attorneys for said Union National Bank, and said Minot had on deposit to his credit on said day in said American National Bank the amount of $50,000.00; that said Thomas L. Kimball and said Alfred R. Dufrene were, as a part of the transaction hereinbefore set forth, elected directors of said Union National Bank and were ever since such time up to the times of their decease, such directors; that, as these defendants are informed and believe, said Union National Bank and the officers thereof had actual knowledge of the amounts standing to the credit of the several persons, firms and corporations above mentioned as depositors in said American National Bank and the relations between them; but that, if said Union National Bank and the officers thereof did not have actual knowledge (but which these defendants do not admit) of the exact amounts to the credit of said directors and said other persons and corporations as depositors in said American National Bank and the relations between them, it and they ought to have known the same and could have discovered the same upon the exercise of reasonable diligence in the premises; and that said Kimball, Baird, Levy and Dufrene were a majority of the directors present at said special directors' meeting and said resolution could not have been adopted without their votes or the votes of at least three of them.

That said meeting of said Board of Directors on December 21 1895, was held and said resolution adopted at such meeting and said agreement signed and delivered and said assets 103 delivered and said notes signed and delivered without the knowledge or consent of these defendants or either of them.

And these defendants further severally answering say, that no proceedings have been had at law upon the three notes above mentioned or either of them, and that said plaintiff has not reduced his said claim founded upon the note set out in his amended bill to judgment in any court.

And these defendants further severally answering say, that they are informed and believe it to be true, and, therefore, aver that by reason of the facts hereinbefore set forth these defendants are not and cannot be held liable under the laws of the United States for the payment of said notes or any portion thereof.

Wherefore, these defendants severally humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

Howard B. Smith,
Of Counsel.

ELMER C. BROWNLEE,
PETER FRENZER,
JOHN C. FRENZER, and
HOWARD B. SMITH.
By Howard B. Smith,
Their Solicitor.

Indorsed: Filed Feb. 4, 1901. Geo. H. Thummel, Clerk.

104 Thereupon afterwards, to-wit: On the 12th day of February, 1901, Answer of William S. Poppleton to the Amended Bill of Complaint was filed in said case, which said Answer is in words and figures following, to-wit:—

United States Circuit Court—District of Nebraska.
Sumner Wallace, Plaintiff,
"T" 261 vs.
American National Bank, et al., Defendants.

The Answer of William S. Poppleton, defendant, to the Amended Bill of Complaint of Sumner Wallace, Plaintiff.

This defendant, now and at all times hereafter, saving to himself all and any manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer, answering, saith:

That he admits that the American National Bank and the Union National Bank are corporations organized under and by virtue of the banking laws of the United States for the purpose of doing business in the city of Omaha; that he admits that the National Bank Building Company of America is a corporation organized under and by virtue of the laws of the State of Nebraska and doing business in the city of Omaha, Douglas County, Nebraska; that he admits that the McCague Investment Company is a corporation organized under and by virtue of the laws of the State of Nebraska; that he admits that Thomas L. McCague, Alex. G. Charlton, Elmer C.
105 Brownlee, Alfred R. Dufrene, Edgar M. Morsman, Philip Mergin, George G. Wallace, William S. Popple-

ton, John S. King, Charles F. Manderson, Charles C. George, Peter Frenzer, John N. Frenzer, Charles H. Walworth, Frank W. Wessells, Frank Graham, James H. McCulloch, John P. Charlton, C. W. Morton, James J. Brown, Jr., James J. Woodward, Viola Coffin, Howard B. Smith, Edward G. Glenn, Emily J. Robinson, James H. Morton, George Morton, Mary E. Morton, Henry F. Wyman, Albert U. Wyman, F. L. McConnell, Trustee, John E. Patrick, William C. Beer, Marcus C. Acheson, George Marples, James H. Conrad, T. R. Neal, William Baird, John L. McCague, Morris Levy, and John L. McCague, William L. McCague, Thomas H. McCague and Alex. C. Charlton, partners doing business under the firm name and style of McCague Brothers, Rufus B. Bullock, Thomas L. Kimball and Alex. G. Charlton, Secretary are each and all of them citizens of the State of Nebraska.

Defendant admits that in the year 1894 until December, 1895, the said Union National Bank and the said American National Bank, by means of their officers and agents held repeated conferences with respect to the taking over of the business and office fixtures and the office of the American National Bank by said Union National Bank, and the terms under which said arrangement could be consummated.

And defendant says that he does not know and can not set forth as to his belief or otherwise whether or not it is the fact as alleged in plaintiff's amended bill that numerous meetings were held between the prominent stockholders of the two said banks with that end in view, and defendant therefore denies the same.

And defendant alleges that he never participated in
106 any conference on said subject and never knew anything about the proposed taking over of the business, office and office fixtures of the American National Bank by said Union National Bank, until said taking over was actually and physically accomplished, and, until said accomplishment, the said proposed taking over was concealed from your defendant by the officers of said American National Bank and said Union National Bank.

Defendant says that he does not know and cannot set forth as to his belief or otherwise, whether or not it is the fact as alleged in plaintiff's amended bill, that, in the month of December, 1895, the American National Bank aforesaid was in such a financial condition that it became necessary for it to provide in some manner for the payment of a large amount of its deposits on or about January 1st, 1896, and that it did not have on hand sufficient funds with which to meet the demands

which it knew would be made upon it at that time, and which, if not paid, would precipitate a demand by all of its depositors and thus bring on the failure of the bank, with all the attendant loss to depositors; and that the amount of deposits at said time and for which the bank was liable upon call was the sum of $193,949.78 and that the amount of available cash to meet the same was only the sum of $36,979.72, and defendant therefore denies the same.

And defendant says that he does not know and cannot set forth as to his belief or otherwise whether or not it is the fact as alleged in plaintiff's amended bill, that, negotiations were then entered into by the officers of the bank with the Union National Bank of Omaha, Nebraska, for a transfer of the business of the said American National Bank to the said Union National Bank, and to ascertain whether or not some
107 arrangement could be entered into whereby the immediate obligations of the American National Bank should be paid and an opportunity be given to realize upon its assets; that as a result of said negotiations and by and under the direction of the Board of Directors of the said American National Bank and the Board of Directors of the said Union National Bank, a contract was entered into by and between said banks, which contract was signed by said American National Bank by Thomas L. Kimball, President, and attested by Henry F. Wyman, Cashier, and by the said Union National Bank by William W. Marsh, President, and attested by Charles E. Ford, Cashier, and defendant therefore denies the same, but, defendant admits that a contract was on the 21st day of December, 1895, pretended to be made by certain officers of the two banks aforesaid which said pretended contract is fully set forth at a subsequent page of this answer.

Defendant says that he does not know and cannot set forth as to his belief or otherwise whether or not it is the fact as alleged in plaintiff's amended bill, that, immediately after the signing of said agreement, the transfer of the business of said American National Bank was made to the said Union National Bank pursuant to said agreement, and the said Union National Bank at once assumed the payment of all the liabilities of the said American National Bank on the books of the said bank at the time of said transfer, except liabilities for circulation and stockholders, and the said Union National Bank, long prior to the commencement of this action, has paid all of said deposits in full; that the liabilities so as aforesaid assumed by the Union National Bank were as follows: Deposits $193,949.73, Demand Certificates—$5,388.00 Time Certificates, $25,155.55, Cer-
108 tified Checks, $452.04, Cashier's Checks, $327.66, Banks and Bankers, $13,824.27, Bills Payable $50,000.00; that

at said time the said Union National Bank received from the American National Bank the following items in cash, drafts and notes, as follows: Cash, $36,795.78, Drafts on American Exchange Bank, Chicago, $8,000.00, Drafts on Lincoln National Bank, Chicago, $2,000.00, Drafts on Continental National Bank, St. Louis, $234.61 Drafts on Howard National Bank, Boston—$87.40, Drafts on Central National Bank, Philadelphia, $1,000.00, American Cashier's Checks, $39,929.51, Three Notes, $67,000. each, one, two and three years, $201,000.00; that the Cashier's check of $39,929.51 was paid by turning over to said Union National Bank notes for $22,299.10 and a cashier's check for $17,000.00 which was afterwards paid by the American National Bank; that the liabilities of the said American National Bank assumed by the said Union National Bank in excess of the assets of the said American National Bank taken and accepted by the Union National Bank as cash, and without recourse, pursuant to the aforesaid agreement amounted to the sum of $201,000; that immediately after ascertaining under said agreement the amount of liabilities of the American National Bank assumed by the said Union National Bank in excess of the American National Bank taken and accepted by the Union National Bank as cash, and without recourse, and on the 23d day of December, 1895, the said American National Bank, pursuant to the terms of said agreement and in performance thereof executed to the said Union National Bank its three promissory notes aggregating the amount ascertained as aforesaid, to-wit: the sum of $201,000, each of said notes being for the sum of $67,000, and bearing interest at the rate of six per cent per annum from date, one of said notes maturing in one year from its date, one in two years from its date,
109 and one in three years from its date; that the balance of the assets of said American National Bank being all of the assets of said American National Bank not taken by the said Union National Bank as cash, and without recourse, and in pursuance to and in performance of said agreement, were turned over to one Thomas L. Kimball as Trustee for the parties to said agreement, to collect and convert the same into cash for the uses and purposes expressed in said agreement; that on the 8th day of August, 1898, the said Union National Bank sold, assigned and transferred said note, due in one year from date to plaintiff for a valuable consideration, and that plaintiff is and was at the commencement of this action the legal owner and holder thereof; that a copy of said note with endorsements thereon is as follows:

"67,000.00 Omaha, Nebr., Dec. 25, 1895.

One year after date for value received, we promise to pay to the Union National Bank Sixty Seven Thousand Dollars at

its banking office in Omaha, Neb., with interest at six per cent per annum from date payable quarterly until paid.

THE AMERICAN NATIONAL BANK,
By Thomas L. Kimball, President.

Attest:
Henry F. Wyman, Cas".

Endorsed:	Paid Jan. 27, 1896	$3,000.00
	Paid Feb. 29, 1896,	3,000.00
	Paid Mar. 10, 1896,	1,000.00
	Int. paid to Mar. 23, 1896,	
	Paid May 5, 1896,	6,000.00
	Paid May 16, 1896,	4,000.00
	Int. paid to June 23, 1896,	
	Int. paid to Mar. 23, 1897,	
	Paid Mar. 23, 1897.	3,235.00
	Paid May 12, 1897,	4,000.00

Pay Sumner Wallace, or order, without recourse,

UNION NATIONAL BANK,
By J. W. Thomas,
Its Cashier."

Aug. 8, 1898.

110 That there is now due and owing on said note to plaintiff from the said American National Bank the sum of ....., and your defendant therefore denies the same except that defendant admits that the payments so as aforesaid alleged to have been made by the American National Bank have been made.

Defendant says that he does not know and cannot set forth as to his belief or otherwise whether or not it is a fact as alleged in plaintiff's amended bill that said Union National Bank is a creditor of the American National Bank and is still the owner and holder of the two other notes in plaintiff's amended bill described and defendant therefore denies the same.

Defendant denies that the stockholders of the said American National Bank including these defendants, each and every of them, were, and each of them was advised of the situation and condition of the said American National Bank with respect to its inability to pay its depositors and liabilities at the time of the making of the agreement and the notes hereinbefore set out, and that unless some arrangement was made to procure assistance for said American National Bank, the said Bank could not pay its depositors and that the loss under such circumstances would be very great and that the liability of the stockholders would be greatly increased.

Defendant denies that with the knowledge of such condition and liability of said American National Bank, the said stockholders and each and every of them, and the said corporation, the American National Bank, accepted and received the benefits of such contract and ratified and affirmed the same, and allowed and permitted and induced the said Union National Bank to pay out the said sums of money so as aforesaid paid by said Union National Bank to the depositors of the American
111 National Bank and accepted the benefits of such agreement and the payments of the same.

Defendant denies that by means of the actions and inducements of the officers and agents of the American National Bank, and by means of the execution of said notes and contract so as aforesaid made by and with the consent, procurement and inducement of said stockholders, the defendants herein, and with the knowledge and consent of the said defendants, procured the Union National Bank to advance the money to pay off the aforesaid liabilities of the American National Bank and procured the said Union National Bank to expend large sums of money to pay off and satisfy said liabilities and that by means of such contract and notes the said defendants procured the said Union National Bank to expend the sum of over Two Hundred and Eighty Thousand Dollars in extinguishing, paying off, and settling the obligations of said American National Bank.

Defendant denies that the said defendants were, and each of them was advised of the negotiations during the time the same were pending, and the purpose and design of such negotiations and acquiesced in the same and consented thereto. And on the contrary your defendant alleges that he was never advised of said negotiations and as soon as he heard of the result of the same and of said pretended contract of December 21st, 1895, and of the pretended carrying out thereof, and of the taking over of the business office and office fixtures of the American National Bank by the Union National Bank, he promptly and immediately protested and objected thereto, making his protest and objection to the officers of the Union National Bank, the officers of the American National Bank, and the Comptroller of the Currency, and he has ever
112 since protested against the said transaction and has never at any time acquiesced in or consented to the same.

Your defendant says that he does not know and cannot set forth as to his belief or otherwise whether or not it is the fact, as alleged in plaintiff's amended bill, that at the time of the giving of the note described herein the said American Na-

tional Bank delivered to Thomas L. Kimball, as trustee, certain notes and property as security to the notes sued on herein and other notes given to the said Union National Bank at the same time and that said trustee was to collect said security and apply the proceeds thereof to the payment of said notes; That the plaintiff has not a list or description of said security and is unable to give the court a full and accurate description of the same; that the assets of the said American National Bank which by the terms of said contract were not taken as cash but which passed to the trustee, Thomas L. Kimball are now held by one James Burness, as trustee, said Kimball since the commencement of said action having deceased, and the said Burness having been by the Court appointed his successor and to the end that this Honorable Court may have all the [—] herein for its cognizance and for the preservation of such property and due administration of such trusteeship and thus be able to do full and complete equity to all the parties hereto in and about the assessment and judgment against the stockholders of the said American National Bank as hereinafter set out; that the said James Burness, Trustee, should bring into this Court the said assets in his hands to be and abide the order of this Honorable Court in and about the same, as equity and good conscience may require, so that full and complete justice be done herein in the assessment and judgment herein prayed, and in
113 the final liquidation of said Bank, and the distribution of its assets by the final decree herein, or as may be just and equitable, and defendant therefore denies the same.

And the defendant denies that the said respondent, the American National Bank, on the 14th day of January, 1896, went into voluntary liquidation under the provisions of section 5220 of the Revised Statutes of the United States, and that since said time, the said corporation, the American National Bank has not done any banking business except what may have been necessary in looking towards the closing up of its business.

And your defendant says that he does not know and cannot set forth as to his belief or otherwise whether or not it is the fact, as alleged in plaintiff's amended bill, that the plaintiff is a creditor of the said American National Bank and that he brings this action on behalf of himself and all the other creditors of the said American National Bank and the shareholders thereof to the end that the affairs of said bank may be fully settled and wound up, and that the plaintiff for himself and all other creditors of said bank may have a decree and judgment against the said shareholders as by law provided; and that all of the respondents named in this bill were

shareholders of the said American National Bank at the time that it went into liquidation, as hereinbefore set out, and defendant therefore denies the same.

Defendant admits that the American National Bank was capitalized for the sum of $200,000.00 divided into shares of $100.00 each, making in all 2,000 shares of stock issued by said Bank.

And your defendant says that he does not know and cannot set forth as to his belief or otherwise whether or not it is the fact, as alleged in plaintiff's amended bill, that the plaintiff has made defendants in this action all of the stock holders of the said American National Bank in so far as plaintiff has been able to ascertain the names thereof, and that the respondents named herein, at the time the said American National Bank went into voluntary liquidation, as hereinbefore set out, were the owners and holders of the number of shares set opposite their names as hereinafter specified, to-wit:

114

Thomas H. McCague,	10	shares,
Alex. G. Charlton,	9	
Elmer C. Brownlee,	10	
Alfred R. Dufrene,	75	
Edgar M. Morsman,	75	
Philip Mergin,	7½	
George G. Wallace,	75	
William S. Poppleton,	56½	
John S. King,	2	
William Wallace,	20	
Chas. F. Manderson,	10	
Anna C. Crowell,	9 3-4	
Chas. C. George,	15	
R. H. McClellan,	50	
Peter Frenzer,	15	
John N. Frenzer,	5	
Chas. H. Walworth,	22½	
Frank W. Wessells,	3 3-4	
Frank Graham	3 3-4	
James H. McCulloch,	25	
John P. Charlton,	7½	
C. W. Morton,	6	
Royal Wilson,	10	
Jacob Wead,	7½	
James J. Brown, Jr.,	5	
James J. Woodward,	2½	
Viola Coffin,	7½	
Howard B. Smith,	50	

	Edward G. Glenn,	5	
	Emily J. Robinson,	1½	
	James H. Morton,	2	
	George W. Morton,	1	
	Mary E. Morton,	1	
	William Wilson,	11½	
	Henry F. Wyman,	58½	
	A. U. Wyman,	10	
	F. R. McConnell, Trustee,	5	
	John Speer,	110	
115	John E. Patrick,	15	shares,
	R. L. Brownlee,	25	
	Miss Caroline Carpenter,	18	
	W. C. Beer,	6	
	Marcus C. Acheson,	15	
	George Marples,	15	
	Arthur H. Flack,	5	
	Meade C. Williams,	11½	
	James H. Conrad,	10	
	T. R. Neal,	16	
	J. H. Hawkins,	25	
	William Baird,	10	
	The Manufacturers National Bank	25	
	John L. McCague,	287	
	Morris Levy,	50	
	Natl. Bank Bldg. Co. of America	615	
	McCague Brothers,	50	
	Rufus B. Bullock,	22½	
	Thomas L. Kimball,	20	
	Alex. G. Charlton, Secretary,	20	
	Samuel Blackwell,	50	

That the number of shares above set out opposite the name of Alex. G. Charlton, Secretary, to-wit: twenty (20) shares, have been at all times since the placing of said shares in the name of said Alex. G. Charlton, Secretary, and still are owned by the said defendant, McCague Investment Co., and that the said defendant, McCague Investment Company is liable upon any assessment which may be made upon said shares of stock, and defendant therefore denies the same except that your defendant was on the 14th day of January, 1896, the owner of 56½ shares of said stock and that your defendant believes it to be true that the holdings of said stock by the National Bank Building Company of America are as stated in said plaintiff's bill.

And your defendant denies that the American National Bank ever went into voluntary liquidation and your defendant says that he does not know and cannot set forth as to his belief or

otherwise whether or not it is the fact as alleged in plaintiff's amended bill that during the months of December, 1895,
116 and January, 1896, and for a long time prior thereto the American National Bank was wholly insolvent and unable to pay its creditors, and that the said American National Bank has ever since remained and still is wholly insolvent and unable to pay its creditors and that by reason of the voluntary liquidation of the Bank as hereinbefore set forth, and the insolvency of said bank and its inability to meet its obligations, this action is brought against the said American National Bank and its stockholders jointly under and through the authorities granted by the laws of the United States relating to banking, and defendant therefore denies the same.

And defendant denies that under and by virtue of the Banking Laws of the United States each and every of said shareholders, holders of stock of said American National Bank, is held individually responsible equally and ratably, and not one for another for all contracts, debts and engagements of said American National Bank to the extent of the amount [or] his, her or its stock therein, at the par value thereof, in addition to the amount invested in such shares, and that each and every of the stockholders of the said American National Bank, and each and every of the defendants named herein are liable for the payment of the claim of the plaintiff and of the claims of all creditors of said American National Bank to the amount of stock so held by said defendants.

And your defendant says that he does not know and cannot set forth as to his belief or otherwise whether or not it is the fact, as alleged in plaintiff's amended bill, that this action is brought by the plaintiff on behalf of himself and all other creditors of the said American National Bank, in order that this Honorable Court may ascertain who the creditors of said American National Bank are and the total amount of the indebtedness of said Bank, and may further ascertain the
117 amount of the assessment necessary to be made against the shareholders of the said American National Bank in order to pay such indebtedness, and that such assessment as may be necessary be made by this Honorable Court, and that by its decree each and all of said shareholders may be required to pay into this Court the amount so found due, and that the amount so found due from each of said shareholders may be and become a judgment in this action against such shareholders; and that the Trustee so as aforesaid appointed should be brought into this Honorable Court to bring into this cause the assets so as by said agreement to him conveyed, to have the same subject to the order of this Honorable Court as to it may seem meet and to be and abide its order, that complete

equity may be done in respect to all the parties hereto and that the affairs of this said defendant, the American National Bank, may be marshalled between the parties and wound up and litigated in a due, orderly and equitable manner, and that the assets so in the hands of said trustee may be preserved for the benefit of the creditors and shareholders of said American National Bank, and dealt with as equity and good conscience may require, and defendant therefore denies the same.

And your defendant denies each and every other allegation in said plaintiff's amended bill contained not hereinbefore specifically admitted or denied.

And this defendant submits to this Honorable Court that all and every of the matters in said plaintiff's amended bill mentioned and complained of are matters with respect to which the said plaintiff is not entitled to any relief in or from a court of equity against your said defendant, and are not sufficient to constitute a cause of action against your defendant, and your defendant claims and hopes he shall have the same benefit of this defense as if he had demurred to said plaintiff's amended bill for want of equity.

118

And defendant further answering, claims and alleges that prior and up to August 12th, 1889, John L. McCague, William L. McCague and Thomas H. McCague were engaged in a general banking and real estate business in the City of Omaha, Nebraska, under the name of McCague Brothers.

That on or about the month of October, 1886, the said William L. McCague became the owner of lot eight (8) in block eighty-seven (87) in the City of Omaha, State of Nebraska, and paid for the same a total consideration of Thirty-one Thousand ($31,000.00) Dollars.

That on or about the first day of August, 1889, the said John L. McCague, William L. McCague and Thomas H. McCague took the necessary steps and caused the necessary steps to be taken to organize the American National Bank of Omaha under the laws of the United States with a capital stock of Two Hundred Thousand ($200,000.00) Dollars, and solicited subscriptions for said capital stock and your defendant subscribed for Seventy five shares of said capital stock of the par value of Seven Thousand Five Hundred ($7,500.00) Dollars; and afterwards paid for the same in cash within the time prescribed by law, but said amount of said defendant's holdings was afterwards reduced to 56¼ shares.

That said American National Bank of Omaha was duly organized and on or about the 12th of August, 1889, commenced business and was the American National Bank of Omaha
119 referred to in plaintiff's amended bill, and John L. McCague was elected president of said Bank, William L. McCague was elected a director and Thomas H. McCague, Cashier.

That on or about the second day of September, 1889, the said John L. McCague, William L. McCague and one John Laurence caused to be organized and incorporated under the laws of the State of Nebraska a corporation known as the National Bank Building Company of America, having for its purpose the erecting, holding, owning, controlling and [generally] management of buildings in Omaha and elsewhere for the purpose and use of banks, shops, dwellings, offices and the like, and the buying and acquiring title to, owning, holding, controlling, selling, conveying, leasing, renting, having and handling real and personal property in Omaha and elsewhere to the said end and purpose.

That the specific purpose of said corporation was to acquire title to lot eight (8) block eighty-seven (87) Omaha, and erect a Bank and office building thereon and enjoy the revenue from the leasing of the rooms and offices in the same and your defendant alleges that John L. McCague was the managing agent for said corporation, and that William L. McCague and Thomas H. McCague were stockholders in the same.

That on or about the second day of September, 1889, a secret arrangement, unknown to your defendant, was, as defendant is informed and believes, entered into between the said National Bank Building Company of America and certain stockholders on the one side whose names are not known to your defendant, and John L. McCague, William L. McCague and Thomas H. McCague and other officers and certain stockholders of the American National Bank on the other side, by which, as defendant is informed and believes, latter
120 parties agreed to use their influence in the management of the American National Bank to bring the said bank into the building to be erected by the said National Bank Building Company of America as a tenant thereof at a rental of Forty eight Hundred ($4,800.00) Dollars per year for the banking room as designated in the plans of said building at said time and substantially the same as afterwards built and occupied by said Bank, or at such a rental as taken together with the other rentals secured from said building should amount to a certain agreed per cent, the exact amount of which is not known to your defendant, upon the money in-

vested in said bank building and the real estate on which the same should be erected.

That the said agreement was, as defendant is informed and believes, in contemplation by John L. McCague, Thomas H. McCague, William L. McCague, James Laurence, William Minot Jr., and other parties whose names are unknown to your defendant subsequently interested in the American National Bank and the National Bank Building Company of America, and who among them, upon the organization of said corporation your defendant alleges, acquired and have ever since held a controlling influence in the same, before either of said corporations were organized, and said contemplated agreement was one of the inducements to the organization of the American National Bank by said John L. McCague, William L. McCague and Thomas H. McCague, which fact was unknown to your defendant.

That thereupon the said William L. McCague transferred said lot eight (8) block eighty-seven (87) Omaha, to Henry Griffen for the purpose of having said Henry Griffen convey
the said William L. McCague's title to said real estate
121 to the National Bank Building Company of America,
and thereupon said Henry Griffen and wife transferred the title to said real estate to the National Bank Building Company of America.

That for the purpose of increasing the apparent amount of the investment of said National Bank Building Company of America and the furnishing a basis for demanding high rentals from the American National Bank and others, the consideration of said transfer from William L. McCague to said National Bank Building Company was represented and stated to be the sum of Seventy-five Thousand ($75,000.00) Dollars, which sum was, as defendant is informed and believes Forty-four Thousand ($44,000.00) Dollars in excess of the price paid for said property by William L. McCague and greatly in excess of the real amount and consideration received by him for said real estate from said National Bank Building Company of America.

That thereupon a Bank and office Building named the "McCague Building" was erected on said real estate by said National Bank Building Company of America and at the completion thereof in the year 1890, the Board of Directors of the American National Bank voted to remove the said Bank to said Building and to take a five years lease of a portion of the east half of the second floor of the same at a rental of Forty Eight Hundred ($4,800.00) Dollars per year, which de-

fendant alleges was an unreasonably and grossly excessive rental far exceeding the real rental value of said quarters and thereupon said American National Bank was removed into said building and thereafter continued to be there.

That said action of said Directors was influenced so far as regarded those directors not interested in the National
122 Bank Building Company of America, by the solicitation of John L. McCague, William L. McCague and Thomas H. McCague and by the confidence which the directors reposed in John L. McCague who was then president of said bank, and in Thomas H. McCague who was then cashier, and by the representations of said John L. McCague, Thomas H. McCague and William L. McCague that the then quarters of the Bank were utterly inadequate for the proper transaction of its business and the proper convenience and treatment of its customers, officers and employes, and that the said quarters in the McCague Building would be worth to the Bank the said rental of Forty Eight Hundred ($4800.00) Dollars per year, which representations, the said Directors, relying upon the experience, judgment and acquaintance of said president and cashier as regarded the business of said Bank and their supposed cash interest and that of William L. McCague in the capital of said Bank, believed and were influenced by.

Your defendant alleges that for the purpose of securing subscriptions to the stock of the American National Bank and for the purpose of securing the subscription of your defendant to said stock, said John L. McCague, Thomas H. McCague and William L. McCague represented to your defendant that they would at once turn over to said American National Bank the banking business of McCague Brothers aforesaid, but your defendant alleges that said John L. McCague, William L. McCague and Thomas H. McCague failed to make good their said representation that they would turn over to said Bank the Banking business of the McCague Brothers, but that on the contrary they organized, under the laws of Nebraska, the McCague Savings Bank and secured therefor quarters in the McCague Building immediately across the hall from the
123 American National Bank, and there carried on a Savings Bank business composed in greater part of the former banking business of the firm of McCague Brothers, thus directly competing with the American National Bank for deposits and patronage, to the injury of business of said American National Bank of Omaha.

And your defendant alleges that the said organization of the McCague Savings Bank and its taking quarters in the said McCague Building were, as defendant is informed and

believes, a part of the inducement for the organization of the National Bank Building Company of America and the erection of the McCague Building, which fact was unknown to your defendant, and were as defendant is informed and believes, in contemplation by John L. McCague and Thomas H. McCague before the erection of said McCague Building and at the time of the organization of the American National Bank of Omaha.

That on the 12th day of June, 1893, the said American National Bank of Omaha passed into the hands of a bank examiner acting under the direction of the comptroller of the currency and became closed and suspended.

That thereupon the said John L. McCague, William L. McCague, Thomas H. McCague and William Minot, Jr., and James Laurence and certain other parties whose names are not known to your defendant, representing among them a controlling influence in both the American National Bank and the National Bank Building Company of America made strenuous efforts to induce the comptroller of the currency to permit the bank to again open and continue in business.

That thereupon the comptroller of the currency signified his willingness to permit said bank to resume business, provided its capital were reinforced to the extent of Fifty Thou-
124 sand ($50,000.00) Dollars in cash.

That on account of the pecuniary interest of the said National Bank Building Company in retaining said bank in operation as a tenant of its building, both on account of the bank rental and the rental of a large number of other tenants who were attracted to said building by their business connection with said bank, certain stockholders in said National Bank Building Company of America whose names are not all known to your defendant but among them were William Minot, Jr., and James Laurence, supplied or caused to be supplied or pretended to supply or cause to be supplied the necessary amount of money to pay said assessment, and your defendant alleges that all of the money necessary to pay the assessments of the stockholders who were unable or unwilling to pay the same were supplied or pretended to be supplied or to be caused to be supplied by said parties.

That in return for said assistance or pretended assistance and in order to give the parties furnishing the same more complete control of the management of the American National Bank, the said John L. McCague, William L. McCague and Thomas H. McCague transferred all or nearly all their stock in said Bank to the said National Bank Building Company of America and said National Bank Building Company has, as defendant is informed and believes, ever since held the same.

That thereafter on or about the seventh day of September, 1893, it having been made to appear to the Comptroller of the Currency that the capital of said Bank had been reinforced in accordance with his aforesaid requirements, he permitted the said Bank to resume business and it thereupon did again resume business and continue to carry on the same.

125 Your defendant alleges that after the resumption of said American National Bank in September, 1893, it was controlled by the National Bank Building Company, and those of its stockholders who were also stockholders in the National Bank Building Company, and that, unknown to your defendant, the design and intention of said controlling interest was not to continue in the banking business but to use the business and good-will and property of said Bank as the basis of some sale or contract by which the business and good will and property of the said American National Bank might be made a consideration to some other National Bank of Omaha to move into the said McCague Building and thus prevent the loss of a bank tenant and the consequent loss of rental from the east banking room and deterioration in the rental value of the remaining portion of the building by the cessation of banking business therein.

That during the years 1894 and 1895 and on the 24th day of December, 1895, William Minot, Jr., Thomas L. Kimball, Alfred R. Dufrene and Morris Levy who were all directors and Thomas L. Kimball of whom was President of the said American National Bank of Omaha had on deposit in said bank sums of money aggregating, as your defendant is informed and believes, over Sixty Thousand ($60,000.00) Dollars, and that owing to the unprosperous condition of business there was danger that the withdrawal of the same in the ordinary course of business at any time during 1895 might cause said bank to suspend.

And your defendant alleges that for the reason that the aforesaid National Bank Building Company of America and its stockholders and tenants owned and controlled a large portion of the stock of said American National Bank of Omaha and had been chiefly instrumental in bringing about its re-
126 sumption and were willing to assist it and had assisted it from time to time for the purposes aforesaid, and for the reason that without the assistance and deposits of the National Bank Building Company and its stockholders the Directors and officers of said Bank feared that it would fail and that they would lose their deposits in said bank and would be liable to an assessment on their stock, the officers and directors of the said American National Bank were wholly subject as regarded their share and voice in the management of said bank

to the will and control of said National Bank Building Company of America and its stockholders represented in the matter principally by William Minot, Jr.

That for more than a year prior to December 21st, 1895, negotiations were in progress, unknown to your defendant, between William Minot, Jr., and other parties representing the National Bank Building Company of America and various banking institutions in Omaha, among which were the Union National Bank of Omaha and the Nebraska National Bank of Omaha, looking toward the transfer to one of said banks of the business, patronage and good will of said American National Bank upon condition that the Bank taking the same would move its business into the McCague Building and pay such other and further consideration as said William Minot, Jr., and said National Bank Building Company and said officers and directors of said American National Bank might be able to obtain.

That in December, 1895, William Minot, Jr., came in person to Omaha and after negotiating personally with the representatives of various banks in Omaha finally succeeded in bringing about, unknown to your defendant, an agreement and
127 understanding between the American National Bank and the said Union National Bank of Omaha which was embodied in the form of a contract as follows:

"This Indenture Witnesseth, that the American National Bank, a corporation, of Omaha, Nebraska, herein described as the party of the first part has and by these presents does hereby agree for the consideration hereinafter mentioned, to and with the Union National Bank, a corporation, of Omaha, Nebraska, herein described as the party of the second part as follows:

First. The party of the first part agrees to sell and assign to the party of the second part its cash on hand, office furniture and fixtures and such of its bills receivable as the party of the second part may be willing to take as cash without recourse on the party of the first part.

Second. The party of the second part agrees to purchase and does hereby purchase from the party of the first part the business of the party of the first part, its cash on hand, office furniture and fixtures and such bills receivable as the party of the second part may be willing to take as cash on examination of the same without recourse on party of first part, and to pay the party of the first part for said office furniture Three Thousand Seven Hundred and Fifty Dollars ($3,750.00) and to assume the liabilities of the party of the first part to its

depositors and on account of its bills payable, and to liquidate the remaining assets of the party of the first part which may not be taken or received as cash by the party of the second part without charge or expense to the party of the first part except such court charges and attorney's fees as may be found necessary, and that such liquidation shall be carried on under the direction of Thomas L. Kimball or such
128 other person as may be agreed upon by the stockholders of the party of the first part, it being understood and agreed that said Kimball or his successor shall represent in said liquidation the stockholders of the party of the first part and shall receive and hold the proceeds of the assets of the party of the first part as trustee of the parties hereto for mutual protection of the rights of each in accordance with the terms and conditions of this agreement, and that all necessary court charges and attorney's fees in said liquidation shall be incurred under the direction of said Thomas L. Kimball or his successors.

Third. In consideration of the above agreements of the party of the second part, the party of the first part hereby agrees to sustain and pay one-half of the loss and expense which the party of the second part may sustain on account of removal from its present quarters by reason of its unexpired lease on its present place of business, and one-half of the loss which party of the second part may sustain on the sale of its office furniture and fixtures, which furniture and fixtures are agreed upon at the present price and valuation of Three Thousand Seven Hundred and Fifty Dollars ($3,750.00), and the party of the first part further agrees to guarantee and does hereby guarantee the party of the second part against any and all loss on account of its assumption of the liabilities of the said party as aforesaid.

And to this end the party of the first part agrees to execute and deliver to the party of the second part its three promissory notes of equal sums for the amount of liability which party of the second part may assume after crediting the full amount of cash on hand and bills receivable and other assets which may be accepted by party of the second part on examination, which notes shall draw interest from date at the rate of six
129 per cent per annum payable quarterly, and to be payable in one, two and three years from date, respectively, and be non-negotiable.

And in case of non-payment of any of said notes when due, the whole of said principal sums of all said notes and accrued interest shall thereupon become due and payable.

And as further security to party of the second part the party of the first part agrees to sell and assign and does hereby sell and assign to the party of the second part all of its assets which may remain after the selection therefrom by the party of the second part heretofore mentioned including all its bills receivable stocks, bonds, personal property of every kind and all real estate and rights and interests therein and liens thereon with the understanding and agreement that the party of the second part shall have and hold said assets and properties subject to the rights of the said Thomas L. Kimball or his successors to collect and convert the same into cash for the use and purposes hereinbefore expressed.

And it is agreed that the party of the first part may pay and have credited on said notes at any time any sum of money of Fifteen Hundred Dollars ($1,500.00) and upwards, provided the sum so paid shall be in even hundreds.

Witnesseth the name and corporate seal of the parties hereto this 21st day of December, 1895.

[Seal] THE AMERICAN NATIONAL
Attest: BANK OF OMAHA,
Henry F. Wyman, Cashier. By Thomas L. Kimball,
President.

THE UNION NATIONAL
Attest: BANK OF OMAHA,
C. E. Ford, Cashier. By W. W. Marsh,
[Seal]" President.

130 Defendant alleges that on or about the 21st day of December, 1895, the said contract was approved, ratified and confirmed by the Board of Directors of the American National Bank and the Union National Bank and the officers of said Banks were respectively by their respective Boards of Directors authorized to carry out and execute the provisions of said contract, and, after crediting the cash of the American National Bank and certain of its assets as cash against the obligations of the American National Bank assumed by the Union National Bank, the three non-negotiable notes provided in said contract to be executed by the American National Bank and delivered to the Union National Bank were so executed and delivered and the remaining provisions of said contract were executed, or put in process of execution.

Your defendant alleges that at the same time and in consideration of said agreement which your defendant alleges was highly advantageous to said Union National Bank by reason of the deposits, good will and patronage which it brought to

said Bank, the said Union National Bank, as defendant is informed and believes, secretly agreed with certain of the Directors of the American National Bank to hold them harmless as to any further liability on their part as stockholders in the American National Bank, and to give the said parties stock in the Union National Bank to a certain amount not known to your defendant, either free of cost or on favorable terms, and to elect said parties or their representatives Directors in said Union National Bank and to otherwise protect them in a manner not precisely known to your defendant, for causing the said American National Bank to enter into said agreement advantageous to said Union National Bank.

131 That it was no part of said agreement between the Union National Bank and the American National Bank and the said stockholders in the American National Bank that your defendant's interests as a stockholder in the American National Bank should be protected or that he should receive any consideration whatever from said transactions, and your defendant alleges that said contract has never been submitted to or ratified by the stockholders of the American National Bank, and defendant alleges that he did not know of said contract nor did your defendant know that such a contract was in contemplation until after the 21st day of December, 1895.

Your defendant alleges that as soon as said contract came to his knowledge, he protested against the same to officers of the American National Bank and of the Union National Bank and to the Comptroller of the Currency, and has never since approved or acquiesced in the same.

That on or about the 23d day of December, 1895, the Union National Bank of Omaha, in pursuance of said agreement aforesaid, moved hastily and secretly into the place of business of the said American National Bank in said McCague Building and has ever since remained there.

Your defendant alleges that he has never received any consideration whatever for the said transfer of said assets, patronage and good will of the said American National Bank to the said Union National Bank, but that afterwards, on or about the 14th day of January, 1896, or a short time before or after said date, as your defendant is informed and believes, certain of the Directors of the American National Bank
132 at the time of the execution of said contract of December 21st, 1895, received shares of stock in the Union National Bank, the exact amount of which is not known to your defendant, but which defendant alleges, on information

and belief, were not paid for in full in cash or otherwise, and thereupon certain of said parties were elected directors in the Union National Bank.

That at all times since the erection of said McCague Building a portion of its offices have been empty and that such tenants as it has are attracted mainly by reason of the presence of a national bank on its main floor, and have been for the most part tenants having some business connection as customers, borrowers, employees, attorneys, contractees, or otherwise with said bank and that without the presence of a national bank in said building it would have lost a large proportion of the tenants it possessed, and your defendant alleges that the said contract and agreements entered into as aforesaid, on or about the 21st day of December, 1895, by providing that the Union National Bank of Omaha should move into said building were worth to the National Bank Building Company of America the sum of One Hundred Thousand Dollars ($100,000.00) and upwards, which consideration for said sale of the business, patronage and good will of the said American National Bank as aforesaid caused to be made by the said William Minot Jr. representing the said National Bank Building Company [innured] wholly to the benefit of said National Bank Building Company of America to the exclusion of the other stockholders in said bank, and for said reason and for the reason that certain of the Directors of the American National Bank as aforesaid received inducements from the Union National Bank as aforesaid to vote for the making of said contract of December 21st, 1895, and because of the fact that the interests of a number of said directors as
133 depositors to be protected outweighed their interest as stockholders in said American National Bank, and because of the secrecy of said actions of said parties to said contract in making and carrying the same into execution, and by reason of the facts in this answer hereinbefore stated, the said contract was and is fraudulent, and null and void and no liability against your defendant on his stock in the said American National Bank of Omaha can be based thereon.

And your defendant alleges that under and in pursuance of said contract, the business and property and good will and assets of said American National Bank were actually transferred and placed in the possession of the Union National Bank and it became the owner of the same not in the ordinary course of the banking business and contrary to the laws of the United States, and said contract is for that reason and for other reasons appearing on its face null and void and of no force and

effect and no liability against your defendant on his stock in said American National Bank can be based thereon.

Defendant alleges that said Union National Bank and its officers entered into said contract of December 21st, 1895, and that the Board of Directors subsequently ratified the same with full knowledge of all the facts constituting its illegal and fraudulent character hereinbefore set forth, and your defendant alleges that said note sued upon in this action and set forth in plaintiff's bill is one of three non-negotiable notes executed by the American National Bank under and by virtue of and as a part of said fraudulent and illegal contract of December 21st, 1895, as hereinbefore set forth, but as to the amount, date, endorsements and terms of said note and amount which has been paid on the same, and whether plaintiff in this cause has actually purchased and paid for the
134 same, defendant, as hereinbefore stated, is not informed; and said note and the execution and delivery of the same to the Union National Bank of Omaha is therefore and on account of the facts touching the said contract of December 21st, 1895, and the making, manner and execution thereof and the circumstances leading up to and surrounding the same as hereinbefore set forth, illegal, fraudulent, null and void, and the officers of the American National Bank had no lawful authority to execute or deliver the same and no liability against defendant on his stock in said American National Bank can be based thereon.

All which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WILLIAM S. POPPLETON, Defendant.
WILLIAM S. POPPLETON, Counsel.

Indorsed: Filed Feb. 12, 1901. Geo. H. Thummel, Clerk.

135 Thereupon afterwards, to-wit: On the 14th day of June, 1901 a Joint and Several Answer was filed in said case, which said Joint and Several Answer is in words and figures following, to-wit:

In the Circuit Court of the United States in and for the District of Nebraska.

Sumner Wallace, Plaintiff,
Doc. T vs. No. 261.
The American National Bank, et al., Defendants.

Joint and Several Answer of Caroline Carpenter, et al.

To the Honorable, the Judges of the Circuit Court of the United States in and for the District of Nebraska.

Caroline Carpenter, The McCague Investment Company, John L. McCague, Thomas H. McCague, William L. McCague, Alex. G. Charlton, Anna C. Crowell, Emily J. Robinson, George Marples, McCague Brothers, a partnership, Alex. G. Charlton, Secretary, Rufus B. Bullock, Robert H. McClellan, John Speer, R. L. Brownelee and J. H. Hawkins, answering defendants in the above entitled cause, answering the plaintiff's amended bill of complaint jointly and severally now and at all times hereafter reserving to themselves all right of exception to said complainant's said amended bill of complaint for answer thereto or so much and such parts thereof, as these answering defendants are advised is material or necessary for them to make answer unto jointly and severally say:

That they jointly and severally admit that The American National Bank and the Union National Bank are corporations organized under and by virtue of the banking laws of the United States for the purpose of doing business in the City of Omaha, Douglas County, Nebraska, but deny that said banks are within the jurisdiction of the Circuit Court of the
136 United States within and for the District of Nebraska.

That they jointly and severally admit that each of them were at the time of the filing of the bill in this said cause and now are citizens and residents of the respective states as alleged in said amended bill, admit that the plaintiff was at the time of the filing of said bill and still is a resident and citizen as in said bill set forth, and admit that each and all of the other defendants to this said cause were at the time of the filing of said bill residents and citizens of the respective states as alleged in said bill, excepting Alfred R. Dufrene, Thomas L. Kimball, and Royal Wilson who have since deceased, and James J. Brown, Jr., who died before said original bill was filed.

And these defendants further severally answerinng say that they deny that it is true that in the year 1894 until December, 1895, the said Union National Bank and the said American Na-

tional Bank, by means of their officers and agents, held repeated conferences with respect to the taking over of the business and office and office fixtures of the American National Bank by said Union National Bank, and the terms under which said arangement could be consummated, and deny that numerous meetings were held between the prominent stockholders of the two said banks, with that end in view.

And these answering defendants further severally answering say that they deny that in the month of December, 1895, the said American National Bank was in such a financial condition that it became necessary for it to provide in some manner for the payment of a large amount of its deposits on or
137 about January 1, 1896, and that it did not have on hands sufficient funds with which to meet the demands which it knew would be made upon it at that time, and which, if not paid, would precipitate a demand by all of its depositors, and thus bring on at once the failure of the bank, with all the attendant loss to the depositors, but admit that upon the happening of certain contingencies it might have become necessary for it to provide for the payment of a large amount of money to its depositors on or about said January 1, 1896.

And these defendants further severally answering say that they have been informed and believe it to be true that the amount of deposits at said time and for which the bank was liable upon call was the sum of $193,948.78, but deny it to be true that the amount of available cash to meet the same was only the sum of $36,979.78, but that they have been informed and believe it to be true and therefore aver that the amount of available cash and items equivalent to cash to meet the same was $49,000.00.

And these answering defendants further severally answering say that they have been informed and believe it to be true that negotiations were then (to-wit: in December, 1895) entered into by certain officers of the American National Bank with the Union National Bank of Omaha, Nebraska, for a transfer of the business of the said American National Bank to the said Union National Bank, and to ascertain whether or not some arrangement could be entered into whereby the immediate obligations of the American National Bank should be paid.

And these defendants further severally answering say that they have been informed and believe it to be true that as a result of the negotiations mentioned above and by and
138 under the direction of the Board of Directors of the said American National Bank as hereinafter more fully set forth, and the Board of Directors of the said Union National Bank the name of the American National Bank was affixed to

an instrument purporting to be a contract between said bank by Thomas L. Kimball who was then president of the American National Bank and attested by the defendant Henry F. Wyman who was then cashier of said American National Bank, and was signed by William W. Marsh, president, and attested by Chas. E. Ford, Cashier respectively of said Union National Bank; and believe that a copy of said purported contract is attached to said amended bill, but these defendants for greater certainty thereof pray leave to refer to said writing when the same shall be presented in Court.

And these defendants further jointly and severally answering say that they have been informed and believe it to be true that immediately after the signing of the said agreement the transfer of the business of the said American National Bank was made to the said Union National Bank pursuant to said agreement, and that the said Union National Bank at once assumed the payment of all the liabilities of the said American National Bank to its depositors and on account of its bills payable, but further say that they do not know and cannot set forth as to whether or not the said Union National Bank, long prior to the commencement of this action, has paid all of such deposits in full and therefore deny the same.

And these defendants further say that they do not know and cannot set forth as to their belief or otherwise whether the liabilities alleged in said amended bill were or have been
139 assumed by the said Union National Bank, and whether the items in cash, drafts and notes alleged to have been received by the Union National Bank from the American National Bank are fully and truly set forth therein, and whether or not a cashier's check of $39,929.51 was received by said Union National Bank from said American National Bank, and whether or not the same was paid by turning over to said Union National Bank notes for $22,299.10, and a cashier's check for $17,000.00, and whether or not the same was afterwards paid by the American National Bank; but admit that a cashier's check for some amount was received by said Union National Bank from said American National Bank, which check was paid by turning over to the said Union National Bank notes for an amount unknown to these answering defendants, and a cashier's check for an amount unknown to these answering defendants, which check was afterwards paid by said American National Bank.

And these defendants further jointly and severally answering say that they deny that the liabilities of the said American National Bank assumed by the said Union National Bank in excess of the assets of the said American National Bank taken and

accepted by the Union National Bank as cash, and without recourse, pursuant to the aforesaid alleged agreement, amounted to the sum of $201,000.00.

And these defendants further jointly and severally answering say that they deny that the American National Bank executed and delivered to the Union National Bank the three notes mentioned in said amended bill, but upon information and belief admit it to be true that on the 23rd day of December, 1895, the said Thomas L. Kimball, who was then President of the said American National Bank, executed and de-
140 livered to said Union National Bank three (3) promissory notes in the name of the American National Bank as maker, each of said notes being for the sum of $67,000.00, and bearing interest at the rate of six (6) per cent. per annum from date, one of said notes maturing in one year from date, one in two years from its date, and one in three years from its date.

And these defendants further severally answering say that they deny that the balance of the said assets of the said American National Bank, being all of the assets of the said American National Bank not taken by the said Union National Bank as cash, and without recourse, and in pursuance to and in performance of said agreement were turned over to one Thomas L. Kimball as trustee of the parties to said agreement to collect and convert the same into cash for the uses and purposes expressed in said agreement, but say that the balance of the assets of the said American National Bank were turned over to said Union National Bank pursuant to the terms of said agreement to liquidate the same.

And these defendants further jointly and severally say that they do not know, and have not been informed save by said complainant's bill and amended bill, and cannot set forth as to their belief or otherwise, whether on the 8th day of August, 1898, the said Union National Bank assigned and transferred said note due in one year from date to said plaintiff for a valuable consideration and whether or not said complainant is and was at the commencement of this action the legal holder and owner thereof, and whether or not a copy of said note with endorsements thereon is fully set forth in said amended bill, and therefore deny the same.

And these defendants further jointly and severally an-
141 swering say that they deny on information and belief that there is now due and owing on said note to said plaintiff from the American National Bank the sum of $....., or any sum whatever, and also deny on information and belief that the Union National Bank is a creditor of said American

National Bank, and that said Union National Bank is still the owner and holder of the two other notes in said amended bill described.

And these defendants further jointly and severally answering say that they deny that the defendants and each and every of them, were, and deny that each of them was advised of the situation and condition of the said American National Bank with respects to its liability to pay its depositors and liabilities at the time of the making of the agreement and notes set out in said amended bill, and that unless some arrangement was made to procure assistance for said American National Bank the said Bank could not pay its depositors, and that the loss under such circumstances would be very great, and deny that the liability of the stockholders would be greatly increased.

And these defendants further jointly and severally answering say that it is not true and they deny that they or either of them had any knowledge of the condition and liability of the said American National Bank as alleged in said bill, and that it is not true, and they deny that they or either of them accepted the benefits of such contract and ratified and affirmed the same, and that it is not true and they deny that they or either of them except as hereinafter set forth allowed and permitted the Union National Bank to pay out the said sums of money alleged in said amended bill to have been paid by the Union National Bank to the depositors of said American
142 National Bank, and that it is not true and they deny that they or either of them induced the Union National Bank to pay out the said sums of money alleged in said amended bill to have been paid by the Union National Bank to the depositors of the said American National Bank, and that it is not true and they deny that they or either of them accepted the benefit of said agreement and the payments of the same.

And these defendants further jointly and severally answering say that it is not true and they deny it to be a fact that by means of the actions and inducements of the officers and agents of the American National Bank and by means of the execution of said notes and contracts alleged in said amended bill to have been made by and with the consent, procurement and inducement of the said stockholders (which means, procurement and inducement these defendants deny) the defendants herein, these defendants or either of them, and with the knowledge and consent of the said defendants, or of these defendants or either of them, procured the Union National Bank to advance the money to pay off the liabilities of the American National Bank, and procured the Union National Bank to expend large sums

of money to pay off and satisfy said liabilities of said American National Bank and further say that it is not true and they deny it to be a fact that by means of such contract and notes the said defendants or either of them procured the said Union National Bank to expend the sum of $280,000.00 or any sum whatsoever in extinguishing, paying off and selling the obligations of the said American National Bank.

These defendants further severally and jointly answering say that it is not a fact and they deny it to be a fact
143 that these defendants or either of them was advised of the negotiations during the time the same were pending except as aforesaid and the purposes and designs of such negotiations and acquiesced in the same and consented thereto except as aforesaid.

And these defendants further jointly and severally answering say that they deny that at the time of the giving of the note described in said amended bill the said American National Bank delivered to said Thomas L. Kimball as trustee certain notes and property as security to the note sued on therein and other notes given to the said Union National Bank at the same time, and that said trustee was to collect said securities and apply the proceeds thereof to the payment of said notes, but admit that certain notes and property were at or about that time turned over to the Union National Bank to be liquidated and applied to the payment of said notes.

And these defendants jointly and severally admit that said Thomas L. Kimball has since the commencement of this suit deceased, but respectfully say that this court did not have any jurisdiction or authority to appoint James Burness as successor to said Thomas L. Kimball as trustee under said alleged contract, and further say that they do not know and have not been informed save by the said complainant's said amended bill and cannot set forth as to their belief or otherwise whether such assets have in fact all been turned over to said Burness.

And these defendants further jointly and severally answering say that they deny on information and belief that the American National Bank on the 14th day of January, 1896, or at any other time, went into voluntary liquidation
144 under the provisions of Section 5220 of the Revised Statutes of the United States, but admit on information and belief that since said time the said corporation, The American National Bank, has not done any banking business.

And these defendants further jointly and severally answering say that they deny that said complainant, Sumner Wallace, is a creditor of the said American National Bank.

And these defendants further jointly and severally answering say that they do not know and cannot set forth as to their belief or otherwise whether the respondents named in the Complainant's Amended Bill were shareholders of the American National Bank at the time it went into said alleged voluntary liquidation, and therefore deny the same, but admit that said American National Bank was capitalized for the sum of $200,000.00 divided into shares of $100.00 each, making in all 2000 shares of stock issued by the said bank; but cannot set forth, as to their belief or otherwise whether said plaintiff has or has not made defendants in this action all of the stockholders of the said American National Bank in so far as he has been able to ascertain the names thereof, but for the purpose of this action admit that he has.

And these defendants further jointly and severally answering say that they do not know and cannot set forth as to their belief or otherwise whether the said defendants named in said amended bill of complaint were the owners and holders of the respective number of shares set opposite their names in said amended bill, and therefore deny the same; but admit that the number of shares set out opposite the name of Alex. G. Charlton, to-wit: 20 shares, have been at all times
145 since the placing of said shares in the name of Alex. G. Charlton, Secretary, and still are owned by the said defendant, McCague Investment Company.

And these defendants further jointly and severally answering say that it is not true and they deny that the said American National Bank at the time it is alleged it went into voluntary liquidation, and during the months of December 1895 and January 1896 and for a long time prior thereto was wholly insolvent and unable to pay its creditors, and that said American National Bank has ever since remained and still is wholly insolvent and unable to pay its creditors.

And these defendants further jointly and severally answering say that they deny that this action is brought against the said American National Bank and its stockholders and under and through any authority granted by the laws of the United States relating to banking.

These defendants further jointly and severally answering say that they admit that under and by virtue of the banking laws of the United States each and every of said shareholders is held individually responsible, equally and ratably, and not one for another for all contracts, debts and engagements of the said American National Bank to the extent of the amount of his, her or its stock therein, at the par value thereof, in ad-

dition to the amount invested in such shares, but aver that such indebtedness or liability is limited to valid contract debts and engagements procured and entered into by said bank in the usual and ordinary course of the business of banking; and deny that each and every, or any of the stockholders of said American National Bank, and each and every or any of the respondents named in said amended bill as
146 stockholders are liable for the payment of the claim of plaintiff and the claim of the said Union National Bank to the amount of stock so held by said defendant or in any other amount or to any extent whatever.

And these defendants further jointly and severally answering say that the articles of association of the defendant the American National Bank of Omaha provide that the Board of Directors of said bank shall have authority to elect a president, vice-president, and such other officers and clerks as might be required to transact the business of such association, to fix the salaries of such officers and clerks, to dismiss such officers and clerks, and defines the duties of such officers and clerks, "and generally to do and perform all the acts that may be legal for a Board of Directors to do under the Revised Statutes aforesaid", to-wit: the Revised Statutes of the United States.

That Section 14 of the by-laws of said defendant the American National Bank of Omaha provide that special meetings of the board of directors might "be called by the president, cashier, or at the request of three or more directors."

That at a regular annual meeting of the stockholders of said defendant the American National Bank in Omaha held January 8, 1895, nine (9) persons were elected to serve as directors of said bank in accordance with the articles of association and by-laws of said bank.

That at a special meeting of the directors of said defendant the American National Bank of Omaha held on the 21st day of December, 1895, at which meeting there were present six (6) out of the nine (9) directors of said association, and of which special meeting no notice had been given to the
147 three directors not present, the following resolution was moved, seconded and unanimously adopted, to-wit:

"Whereas, the officers of this bank and the officers of the Union National Bank of Omaha, Nebraska, have negotiated and agreed upon the sale of this bank to the Union National Bank of the business and assets of this bank on the terms and conditions embodied in the agreement of which the following is a copy, to-wit:

That the American National Bank, a corporation of Omaha, Nebraska, hereinafter designated party of the first part has and by these presents does hereby agree for the consideration hereinafter expressed to and with the Union National Bank, a corporation of Omaha, Nebraska, hereinafter designated party of the second part, as follows, to-wit:

First. The party of the first part hereby agrees to sell and assign and does hereby sell and assign to the party of the second part the business of the party of the first part, its cash on hand, office furniture and fixtures, and such of its bills receivable as the party of the second part on examination may be willing to take as cash without recourse on the party of the first part.

Second. The party of the second part hereby agrees to purchase and does hereby purchase of the party of the first part the business of the party of the first part, cash on hand, office furniture and fixtures and such bills receivable as the party of the second part may be willing to take as cash on examination of the same without recourse on the party of the first part and to pay the party of the first part for said office furniture and fixtures the sum of $3750.00, and to assume the
148 liabilities of the party of the first part to its depositors, and on account of its bills payable, and to liquidate the remaining assets of the party of the first part which may not be taken and received as cash by the party of the second part without charge or expense to the party of the first part, except such court charges and attorney's fees as may be found necessary and that such liquidation shall be conducted under the direction of Thomas L. Kimball or such other person as may be agreed upon on behalf of the stockholders of the party of the first part, it being understood and agreed that said Kimball, or his successor, shall represent in said liquidation the stockholders of the party of the first part, and shall receive, hold and use the proceeds of the assets of the party of the first part as trustee of the parties hereto for the mutual protection of the rights of each in accordance with the terms and conditions of this agreement, and that all necessary court charges and attorneys fees attending said liquidation shall be incurred under the direction of the said Kimball or his successor.

Third. In consideration of the above agreement of the party of the second part, the party of the first part hereby agrees to retain and pay one-half of the loss and expense which the party of the second part may sustain on account of the removal from its present quarters by reason of its unexpired lease on its present place of business and one-half of the loss which the party of the second part may sustain on the sale of its

office furniture and fixtures, which furniture and fixtures are agreed upon at the present price and value of $3750.00, and the party of the first part further agrees to guarantee and does hereby [guaranty] the party of the second part against any and all loss on account of assuming the liabilities of the
149 party of the first part as aforesaid; and to this end the party of the first part agrees to execute and deliver to the party of the second part its three promissory notes of equal sums for the amount of the liabilities which the party of the second part may assume after crediting the full amount of cash on hand and bills receivable and other assets which may be accepted by the party of the second part on examination, which notes shall draw interest from date at the rate of 6% per annum, payable quarter annually, and be payable in one, two and three years from date, respectively, and shall be non-negotiable; and in case of non-payment of any of said notes when due, the whole of said principal sum of all of said notes and accrued interest shall thereupon become due. And as further security to the party of the second part the party of the first part agrees to sell and assign, and does hereby sell and assign to the party of the second part all of its assets which may remain after the selection thereof by the party of the second part heretofore mentioned, including all its bills payable, stocks, bonds, personal property of every kind, and all real estate and rights and interests therein or liens thereon, with the understanding and agreement that the party of the second part shall have and hold said assets and properties subject to the right of said Thomas L. Kimball, or his successor, to collect and convert the same into cash for the uses and purposes heretofore expressed.

And it is further agreed that the party of the first part may pay and have credited on said notes at any time prior to maturity any sums of money of $500.00 and upwards, provided the sums so paid shall be in even hundreds.

150 Witness the names and corporate seals of the parties hereto this 21st day of December, A. D. 1895.

Now Therefore, Resolved, that the foregoing agreement be and the same is hereby ratified and confirmed, and that the officers of the bank be and are hereby authorized to execute said agreement and carry the same into effect for and on behalf of this bank, and that the officers of this bank be and are hereby authorized to execute and deliver to the Union National Bank the notes of this bank in the sums which may be required to comply with the terms of the foregoing agreement."

That thereupon on said 21st day of December the said Thomas L. Kimball who was then president of the said Ameri-

can National Bank entered into an agreement in the name of the American National Bank of Omaha with the defendant the Union National Bank of Omaha, and which agreement was attested by the defendant Henry F. Wyman, who was then the cashier of said American National Bank, a copy of which is as these defendants are informed and believe attached to plaintiff's amended bill as "Exhibit A", and these defendants for greater certainty therein pray leave to refer to the original thereof when the same shall be produced.

That immediately after the execution and delivery of said agreement and the said resolution said Thomas L. Kimball and Henry F. Wyman delivered and turned over to said Union National Bank all of the assets then owned by the said American National Bank, and that said Union National Bank and said Thomas L. Kimball thereupon took complete and exclusive possession and control of such assets and proceeded to and did reduce certain portions thereof (but what and how much are unknown to these defendants) to cash; that whatever
151 payments that have been made upon any of the three notes mentioned in said amended bill of complaint have been made out of such assets so transferred and delivered; and that the assets of the American National Bank so turned over and delivered to the said Union National Bank not including the business, cash on hand, office furniture and fixtures, and bills receivable accepted by the said Union National Bank as cash were of the nominal or face value of about $400,000.00, and of these assets there remains in the hands of the said Union National Bank and Thomas L. Kimball up to the time of his death and now remain in the hands of said Union National Bank and said James Burness assets of the nominal or face value of about the sum of $371,000.00 which have not been liquidated or converted into money or in any manner applied upon the plaintiff's said claim.

That immediately after the execution and delivery of said instrument said Union National Bank of Omaha removed from its former place of business, to-wit: on the southeast corner of 16th and Dodge Streets in the City of Omaha to the place of business of the American National Bank, to-wit: on the northwest corner of 15th and Dodge Streets in said city, and took possession of and has since retained possession of the offices, furniture and fixtures of the said American National Bank and its said place of business, leaving its own office furniture and fixtures and place of business theretofore occupied by it and by its removal left vacant for a long time thereafter, and that said office furniture and fixtures of said Union National Bank were not as valuable as said office furniture and fixtures of said American National Bank.

152 That thereafter on the 25th day of December, 1895, the said Thomas L. Kimball who was then president of said American National Bank executed and delivered to the said Union National Bank three promissory notes in the name of the said American National Bank as maker for the sum of $67,000.00 each, due in one, two and three years respectively, and of which said three notes the note set out in plaintiff's amended bill is the one first maturing.

These defendants jointly and severally aver upon information and belief that there are and were persons other than said Union National Bank and said plaintiff who were and still are creditors of said American National Bank.

These defendants further jointly and severally answering say that no proceedings have been had at law upon the three notes above mentioned or either of them, and that said plaintiff has not reduced [has] said claim founded upon the note set out in his amended bill to judgment in any court.

These defendants jointly and severally further answering aver that said alleged contract heretofore described was beyond the scope and power of the said The American National Bank and the defendant the Union National Bank, was an act ultra [viris], and that said contract is illegal and void and of no force or effect; that no consideration has ever been paid or given for said three promissory notes heretofore described, or either of them, and that said notes are without consideration and are null and void, and were given for the sole and only purpose that it might appear that the said Union National Bank had larger assets than it would otherwise show by its books and for the further purpose of satisfying
153 the requirements of the Comptroller of the Currency of the United States and the national bank examiners, because of the payment of the large payment of cash by reason of the assumption of the obligations under said contract heretofore referred to of the Union National Bank and to the depositors of the American National Bank, which said payment without said notes as assets would impair the credit of said Union National Bank.

These defendants jointly and severally further allege that in the year 1893 the said capital of the said The American National Bank of Omaha became impaired, and that on the ..... day of ....., 1893, the Comptroller of the Currency of the United States under and by virtue of the authority granted by the National Banking Laws of the United States levied or caused to be levied an assessment upon each of said shareholders individually, named in plaintiff's amended bill

of complaint, equally and ratably, and not one for another, to the amount of twenty-five (25) per cent of his, her or its stock therein at the par value thereof in [addotion] to the amount invested in such shares, and that each and every of said stockholders of said American National Bank paid, or caused to be paid said assessment of 25 per cent, so levied and assessed of his, her or its said stock.

And these defendants further severally answering say that they are informed and believe it to be true and therefore aver that by reason of the facts hereinbefore set forth these defendants are not and cannot be held liable under the laws of the United States for the payment of said notes or any portion thereof.

Wherefore these defendants severally humbly pray to be hence dismissed with their reasonable costs and charges
154 in this behalf most wrongfully sustained.

CHAS. BATTELLE,
Counsel for said Answering Defendants.

Indorsed: Filed Jun. 14, 1901. Geo. H. Thummel, Clerk.

155 Thereupon afterwards, to-wit: On the 29th day of June, 1901, an Answer was filed in said case, which said Answer is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

Sumner Wallace, Plaintiff,
Doc. T vs. No 261. In Equity.
The American National Bank et al., Defendants.

The joint and several answer of Charles W. Morton, George Morton, James H. Morton and Mary E. Morton, four of the defendants to the Amended Bill of Complaint of Sumner Wallace.

These defendants respectively, now and at all times hereafter reserving to themselves all right of exception to said complainant's said amended Bill of Complaint, for answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, say:

That they severally admit that the American National Bank and the Union National Bank are corporations organized under and by virtue of the banking laws of the United States for the purpose of doing business in the City of Omaha, Douglas

County, Nebraska; deny that said banks are within the jurisdiction of the Circuit Court of the United States within and for the District of Nebraska as national banks; admit that each of these answering defendants is a resident and citizen of the State of Nebraska; admit that the plaintiff is a resi-
156 dent and citizen of the state therein set forth; and admit that all of the parties were at the time of the filing of the bill in this cause, and still are, residents and citizens as in said amended bill averred, except Alfred R. Dufrene and Thomas L. Kimball, who have since deceased, and James J. Brown, Jr., who died before said original bill was filed.

And these defendants further severally answering say, that they deny that it is true that in the year of 1894, until December, 1895, the said Union National Bank and the said American National Bank by means of their officers and agents held repeated conferences with respect to the taking over of the business and office fixtures of the American National Bank by said Union National Bank and the terms under which the said arrangement could be consummated, and deny that numerous meetings were held between the prominent stockholders of the two said banks with that end in view.

And these defendants further severally answering say, that they deny that in the month of December, 1895, the American National Bank aforesaid was in such a financial condition that it became necessary for it to provide in some manner for the payment of a large amount of its deposits on or about January 1st, 1896, and deny that it did not have on hand sufficient funds with which to meet the demands which it knew would be made upon it at that time.

And these defendants further severally answering say, that they have been informed and believe it to be true, that the amount of, deposits at said time, and for which the bank was liable upon call, was the sum of $193,949.78, but deny it to be true that the amount of available cash to meet the
157 same was only the sum of $36,979.78, and say that they have been informed and believe and aver it to be true that the amount of available cash and items equivalent to cash was about the sum of $49,000.00.

And these defendants further severally answering say, that they have been informed and believe it to be true that negotiations were then (to-wit, in December, 1895) entered into by the officers of the bank (to-wit, the American National Bank) with the Union National Bank of Omaha, Nebraska, for a transfer of the business of the said American National Bank to the said Union National Bank, and to ascertain whether or not some

arrangement could be entered into whereby the immediate obligations of the American National Bank should be paid.

These defendants further severally answering say, that they have been informed and believe it to be true that as a result of the negotiations mentioned above, and by and under the direction of the Board of Directors of the said American National Bank, as hereinafter more fully set forth, and the Board of Directors of the said Union National Bank, the name of the American National Bank was affixed to an instrument, purporting to be a contract between said banks, by Thomas L. Kimball, who was then president of the American National Bank, and attested by the defendant, Henry F. Wyman, who was then cashier of the said American National Bank, and was signed by William W. Marsh, president, and attested by Charles E. Ford, cashier, respectively, of said Union National Bank; and believe that a copy thereof is attached to said amended bill, but these defendants for greater certainty therein pray to refer to said writing when same shall be produced.

158 And these defendants further severally answering say, that they have been informed and believe it to be true, that immediately after the signing of said agreement the transfer of the business of the said American National Bank was made to the said Union National Bank, pursuant to said agreement and that the said Union National Bank at once assumed the payment of all the liabilities of the said American National Bank to its depositors and on account of its bills payable, but further say that they do not know and have not been informed save by the said complainant's said amended bill, whether or not the said Union National Bank long prior to the commencement of this action has paid all of such deposits in full, and therefore deny that it has.

And these defendants further severally answering say, that they do not know and have not been informed save by said complainant's said amended bill and cannot set forth as to the belief or otherwise whether the items of liabilities alleged in said amended bill to have been assumed by the Union National Bank and the items in cash, drafts and notes alleged to have been received by the Union National Bank from the American National Bank are fully and truly set forth therein, and whether or not a cashier's check of $39,929.51 was received by said Union National Bank from said American National Bank and whether or not the same was paid by turning over to the said Union National Bank notes for $22,299.10 and a cashier's check for $17,000.00 and whether or not the same was afterwards paid by the American National Bank.

These defendants further severally answering say, that they deny that the liabilities of the said American National Bank assumed by the said Union National Bank in excess of the assets of the said American National Bank taken and
159 accepted by the Union National Bank as cash and without recourse, pursuant to the alleged agreement therein set forth, amounted to the sum of $201,000.00.

And these defendants further severally answering say, that they deny that the American National Bank executed and delivered to the Union National Bank the three notes mentioned in said amended bill but further say, that they have been informed and believe it to be true, that on the 23rd day of December, 1895, the said Thomas L. Kimball, who was then president of said American National Bank, executed and delivered to said Union National Bank three promissory notes in the name of the American National Bank as maker, each of said notes being for the sum of $67,000.00 and bearing interest at the rate of six per cent per annum from date, one of said notes maturing in one year from its date, one in two years from its date and one in three years from its date.

And these defendants further answering say, that they deny that the balance of the assets of the said American National Bank, being all of the assets of the said American National Bank not taken by the said Union National Bank as cash and without recourse and in pursuance to and in performance of said agreement, were turned over to one Thomas L. Kimball as trustee of the parties to said agreement to collect and convert the same into cash for the uses and purposes expressed in said agreement, but say that the balance of the assets of said American National Bank were turned over to said Union National Bank pursuant to the terms of said agreement to liquidate the same.

And these defendants further severally answering say, that they do not know and have not been informed save by said complainant's said amended bill and cannot set forth
160 as to their belief or otherwise, whether on the 8th day of August, 1898 the said Union National Bank sold, assigned and transferred said note due in one year from date to said plaintiff for a valuable consideration and whether or not said plaintiff is and was at the commencement of this action the legal owner and holder thereof, and whether or not a copy of said note with endorsements thereon is fully set forth in said amended bill, and therefore deny the same.

These defendants further severally answering say, that they deny on information and belief that there is now due and owing on said note to said plaintiff from the American National

Bank the sum of $....., or any sum whatsoever, and also deny on information and belief that the Union National Bank is a creditor of said American National Bank and that said Union National Bank is still the owner and holder of the two other notes in said amended bill described.

And these defendants further severally answering say, that it is not true and they deny that these defendants were or either of them was advised of the situation and condition of the said American National Bank with respect to its alleged inability to pay its depositors and liabilities at the time of the making the agreement and notes set out in said amended bill and that it is not true and they deny that unless some arrangement was made to procure assistance for said American National Bank the said bank could not pay its depositors and that the loss under such circumstances would be very great, and that the [inability] of the stockholders would be greatly increased.

And these defendants further severally answering say, that it is not true and they deny that they or either of them
161 had any knowledge of the alleged condition and liability of said American National Bank, and that it is not true and they deny that they or either of them accepted and received the benefits of such contract and ratified and affirmed the same, and that it is not true and they deny that they or either of them allowed, permitted and induced the Union National Bank to pay out the said sums of money alleged in said amended bill to have been paid by the Union National Bank to the depositors of said American National Bank, and that it is not true and they deny that they or either of them accepted the benefits of said agreement and the payments of the same.

These defendants further severally answering say, that it is not true and they deny it to be a fact, that by means of the actions and inducements of the officers and agents of the American National Bank (if any such there were, which they deny) and by means of the execution of said notes and contract alleged in said amended bill to have been made by and with the consent, procurement and inducement of the said stockholders (which consent, procurement and inducement these defendants deny), the defendants herein, or these defendants or either of them, and with the knowledge and consent of the said defendants, or of these defendants or either of them, procured the Union National Bank to advance the money to pay off the liabilities of the American National Bank and procured the Union National Bank to expend large sums of money to pay off and satisfy said liabilities of said American Na-

tional Bank, and further say that it is not true and they deny it to be a fact that by means of such contract and notes the said defendants or either of them procured the said
162 Union National Bank to expend the sum of over $280,000.00 or any sum whatsoever in extinguishing, paying off or settling the obligations of the said American National Bank.

And these defendants further severally answering say, that it is not a fact and they deny it to be a fact that these defendants were or either of them was advised of the negotiations during the time the same were pending, and the purpose and design of such negotiations and acquiesced in the same and consented thereto.

And these defendants further severally answering say, that they deny that at the time of the giving of the notes described in said amended bill the said American National Bank delivered to said Thomas L. Kimball, as trustee, certain notes and property as security to the notes sued on therein and other notes given to the said Union National Bank at the same time, and that said trustee was to collect said security and apply the proceeds thereof to the payment of said notes, but admit that certain notes and property were at or about that time turned over to the Union National Bank to be liquidated and applied to the payment of said notes.

And these defendants further severally answering say, that they admit that said Thomas L. Kimball has since the commencement of this suit deceased, but respectfully say that this court did not have any jurisdiction or authority to appoint James Burness as successor to said Thomas L. Kimball as trustee under said alleged contract, and further say that they do not know and have not been informed save by the said complainant's said amended bill and cannot set forth as to their belief or otherwise, whether such assets have in fact all been turned over to said Burness.

163 And these defendants further severally answering say, that they deny on information and belief that the American National Bank on the 14th day of January, 1896, or at any other time, went into voluntary liquidation under the provisions of Sec. 5220 of the Revised Statutes of the United States, but admit on information and belief that since said time the said corporation, the American National Bank has not done any banking business.

And these defendants further severally answering say, that they deny that said plaintiff is a creditor of the said American National Bank.

And these defendants further severally answering say, that they admit that the said American National Bank was capitalized for the sum of $200,000.00 divided into shares of $100.00 each, making in all 200 shares of stock issued by the said bank.

And these defendants further severally answering say, that they do not know and have not been informed save by the said complainant's said amended bill, and cannot set forth as to their belief or otherwise, whether the said plaintiff has or has not made defendants in this action all of the stockholders of said American National Bank in so far as he has been able to ascertain the names thereof, but for the purposes of this action admit that he has.

These defendants further severally answering say, that they admit that the said Elmer C. Brownlee, and Peter Frenzer and John N. Frenzer and Howard B. Smith were, at the times mentioned in said amended bill and still are shareholders of the said American National Bank to the number respectively of ten and fifteen and five and fifty shares as stated in said amended bill.

164 And these defendants further severally answering say, that they admit on information and belief that the other defendants named in said amended bill were the owners and holders of the number of shares set opposite their names respectively therein.

And these defendants further severally answering say, that it is not true and they deny that the said American National Bank at the time it is alleged it went into voluntary liquidation and during the months of December, 1895 and January 1896, and for a long time prior thereto, was wholly insolvent and unable to pay its creditors, and that said American National Bank has ever since remained and still is wholly insolvent and unable to pay its creditors.

And these defendants further severally answering say, that they deny that this action is brought against the said American National Bank and its stockholders jointly under and through any authority granted by the laws of the United States relating to banking.

These defendants further severally answering say, that they admit that under and by virtue of the banking laws of the United States, each and every of said shareholders is held individually responsible equally and ratably, and not one for another, for all contracts, debts, and engagements of the said American National Bank to the extent of the amount of his, her or its stock therein, at the par value thereof; in addition

to the amount invested in such shares; but aver that such indebtedness or liability is limited to valid contracts, debts and engagements incurred and entered into by said bank in the usual and ordinary course of the business of banking; and deny
165 that each and every or any of the stockholders of the said American National Bank and each and every or any of the respondents named in said amended bill as stockholders, are liable for the payment of the claim of plaintiff and of the claim of the said Union National Bank to the amount of stock so held by said defendants or to any other amount or to any extent whatsoever.

And these defendants further severally answering say, that the Articles of Association of the defendant, the American National Bank of Omaha, provided that the Board of Directors of said bank should have authority to elect a president, vice-president and such other officers and clerks as might be required to transact the business of such Association, to fix the salaries of such officers and clerks, to dismiss such officers and clerks, to define the duties of such officers and clerks, "and, generally, to do and perform all the acts that may be legal for a Board of Directors to do under the Revised Statutes aforesaid," to-wit: the Revised Statutes of the United States.

That section 14 of the by-laws of said defendant, the American National Bank of Omaha, provided that special meetings of the Board of Directors might "be called by the President, Cashier or at the request of three or more directors."

That at a regular annual meeting of the stockholders of said defendant, the American National Bank of Omaha, held January 8, 1895, nine persons were elected to serve as directors of said bank in accordance with the Articles of Association and By-laws of said bank.

That at a special meeting of the directors of said defendant, the American National Bank of Omaha, held on the 21st day of December, 1895, at which meeting there were present
166 six out of the nine directors of said Association and of which special meeting no notice had been given to the three directors not present, the following resolution was moved, seconded and unanimously adopted, to-wit:

"Whereas, the officers of this bank and the officers of the Union National Bank of Omaha, Nebraska, have negotiated and agreed upon the sale of this bank to the Union National Bank of the business and assets of this bank on the terms and conditions embodied in the agreement, of which the following is a copy:

Agreement.

This Indenture Witnesseth: That the American National Bank, a corporation of Omaha, Nebraska, hereinafter designated party of the first part, has and by these presents does hereby agree, for the consideration hereinafter expressed, to and with Union National Bank, a corporation of Omaha, Nebraska, hereinafter designated party of the second part, as follows, to-wit:

First. The party of the first part hereby agrees to sell and assign and does hereby sell and assign to the second party the business of the party of the first part, its cash on hand, office furniture and fixtures and such of its bills receivable as the party of the second part on examination may be willing to take as cash without recourse on the party of the first part.

Second. The party of the second part hereby agrees to purchase and does purchase from the party of the first part the business of the party of the first part, cash on hand, office furniture and fixtures, and such bills receivable as the party of the second part may be willing to take as cash on examination of the same without recourse for said office furniture
167 and fixtures the sum of Three Thousand seven hundred and fifty ($3750.00) and to assume the liabilities of the party of the first part to its depositors and on account of its bills payable and to liquidate the remaining assets of the party of the first part which may not be taken and received as cash by the party of the second part without charge or expense to the party of the first part, except such court charges and attorneys' fees as may be found necessary and that such liquidation shall be conducted under the direction of Thomas L. Kimball or such other person as may be agreed upon on behalf of the stockholders of the party of the first part, it being understood and agreed that said Kimball or his successors shall represent in said liquidation the stockholders of the party of the first part, and shall receive, hold and use the proceeds of the assets of the party of the first part as trustee of the parties hereto for the mutual protection of the rights of each in accordance with the terms and conditions of this agreement, and that all necessary court charges and attorneys' fees attending said liquidation shall be incurred under the directions of the said Kimball, or his successor.

Third. In consideration of the above agreement of the party of the second part, the party of the first part hereby agrees to sustain and pay one half of the loss and expense which the party of the second part may sustain on account of

removal from its present quarters by reason of its unexpired lease on its present place of business, and one-half of the loss which the party of the second part may sustain on the sale of its office furniture and fixtures, which furniture and fixtures
are agreed upon at the present price and value of three
168 thousand seven hundred and fifty ($3750.00) dollars,
and the party of the first part further agrees to guarantee and does hereby guarantee the party of the second part against any and all loss on account of assuming the liabilities of the party of the first part as aforesaid. And to this end the party of the first part agrees to execute and deliver to the party of the second part its three promissory notes of equal sums for the amount of liabilities which the party of the second part may assume after crediting the full amount of cash on hand and bills receivable and other assets which may be accepted by the party of the second part on examination, which notes shall draw interest from date at the rate of six per cent per annum, payable quarter annually, and be payable in one, two or three years from date respectively, and shall be non-negotiable. And in case of non-payment of any of said notes when due the whole of said principal sums of all of said notes and accrued interest shall thereupon become due.

And as further security to the party of the second part the party of the first part agrees to sell and assign and does hereby sell and assign to the party of the second part all of its assets which may remain after the selection therefrom by the party of the second part hereinbefore mentioned, including all its bills receivable, stocks, bonds, personal property of every kind and all real estate and interests therein or liens thereon, with the understanding and agreement that the party of the second part shall have and hold said assets and properties subject to the right of said Thomas L. Kimball, or his successor, to collect and convert the same into cash for the uses and purposes hereinbefore expressed.

And it is further agreed that the party of the first
169 part may pay and have credited on said notes at any
time prior to maturity any sums of money of five hundred ($500.00) dollars and upwards, provided the sums so paid shall be in even hundreds.

Witness the names and corporate seals of the parties hereto this 21st day of December, A. D. 1895.

Now, therefore, Resolved that the foregoing agreement be and the same is hereby ratified and confirmed and that the officers of the bank be and are hereby authorized and directed to execute said agreement and carry the same into effect for and on

behalf of this bank, and that the officers of this bank be and are hereby authorized to execute and deliver to the Union National Bank the notes of this Bank in the sums which may be required to comply with the terms of the foregoing agreement."

That thereupon, on said 21st day of December, 1895, said Thomas L. Kimball, who was then president of said American National Bank, entered into an agreement in the name of said American National Bank of Omaha with the defendant, the Union National Bank of Omaha, and which agreement was attested by the defendant, Henry F. Wyman, who was then the cashier of said American National Bank, a copy of which is, as these defendants are informed and believe, attached to plaintiff's amended bill as "Exhibit A" and these defendants for greater certainty therein pray leave to refer to the original thereof, when the same shall be produced.

That immediately after the execution and delivery of said agreement and pursuant thereto, and to said resolution, said Thomas L. Kimball and Henry F. Wyman, delivered and turned over to said Union National Bank all of the assets then owned by said American National Bank and that said
170 Union National Bank and said Thomas L. Kimball, thereupon took complete and exclusive possession and control of such assets and proceeded to and did reduce certain portions thereof (but what and how much are unknown to these defendants) to cash; that whatever payments have been made upon any of the three notes mentioned in said amended bill of complaint have been made out of such assets so transferred and delivered; and that the assets of the American National Bank so turned over and delivered to the said Union National Bank, not including the business, cash on hand, office furniture and fixtures and bills receivable accepted by the said Union National Bank as cash, were of the nominal or face value of about $400,000.00, and of these assets there remained in the hands of the said Union National Bank and said Thomas L. Kimball up to the time of his death, and now remain in the hands of said Union National Bank and said James Burness assets of the nominal or face value of about the sum of $371,000.00, which have not been liquidated or converted into money or in any manner applied upon the plaintiff's said claim.

That immedately after the executon and delivery of said instrument, said Union National Bank of Omaha removed from its former place of business, to-wit: on the southeast corner of 16th and Dodge Streets in the City of Omaha, to the place of business of the American National Bank, to-wit: on the northwest corner of 15th and Dodge Streets in said city,

and took possession of and has ever since retained possession of the office furniture and fixtures of said American National Bank and its said place of business, leaving its own office furniture and fixtures in the place of business theretofore occupied by it and by its removal left vacant for a long time
171 thereafter, and that said office furniture and fixtures of said Union National Bank were not as valuable as said office furniture and fixtures of said American National Bank.

That afterwards, on the 25th day of December, 1895, the said defendant, Thomas L. Kimball, who was then President of said American National Bank, executed and delivered to the said Union National Bank three promissory notes in the name of the said American National Bank, as maker, for the sum of $67,000.00 each, due in one, two and three years respectively, and of which said three notes the note set out in plaintiff's amended bill is the one first maturing.

That at the times mentioned in said amended bill and at the times herein mentioned there were and still are persons, other than said Union National Bank and said plaintiff, who were and still are creditors of said American National Bank.

That the directors present at said special directors' meeting were Thomas L. Kimball, holding 10 shares of the stock of said bank, William Baird, holding 10 shares, Charles C. George holding 15 shares, M. Levy holding 50 shares, Alfred R. Dufrene holding 75 shares and A. U. Wyman holding 10 shares; that said Thomas L. Kimball had on deposit on said day to his credit in said American National Bank an amount in excess of $15,000.00; that said M. Levy had on deposit on said day in said bank to his own credit an amount in excess of $150.00 and the Nebraska Clothing Company, of which said Levy was president and manager and in which he was a large shareholder, had on deposit on said day to its credit in said bank an amount in excess of $19,000.00; and that said Alfred R. Dufrene had on deposit on said day in said bank to
172 his credit an amount in excess of $2,000.00 and Mrs. A. R. Dufrene, his wife, had on deposit in said bank on said day to her credit an amount in excess of $2,300.00; that said William Baird at said time was a partner in the firm of Wharton & Baird and said Baird was individually and as a member of said partnership the attorney for William Minot and the representative in said bank of said Minot's interests and that said Wharton & Baird had on deposit to their credit in said bank on said day an amount exceeding $700.00 and were attorneys for said Union National Bank, and said Minot had on deposit to his credit on said day in said American Na-

tional Bank the amount of $50,000.00; that said Thomas L. Kimball and said Alfred R. Dufrene were, as a part of the transaction hereinbefore set forth, elected directors of said Union National Bank and were ever since such time up to the times of their decease, such directors; that, as these defendants are informed and believe, said Union National Bank and the officers thereof had actual knowledge of the amounts standing to the credit of the several persons, firms and corporations above mentioned as depositors in said American National Bank and the relations between them; but that, if said Union National Bank and the officers thereof did not have actual knowledge (but which these defendants do not admit) of the exact amounts to the credit of said directors and said other persons and corporations as depositors in said American National Bank and the relations between them, it and they ought to have known the same and could have discovered the same upon the exercise of reasonable diligence in the premises; and that said Kimball, Baird, Levy and Dufrene were a majority of the directors present at said special directors' meeting and said resolution could not have been adopted
173 without their votes or the votes of at least three of them.

That said meeting of said Board of Directors on December 21, 1895, was held and said resolution adopted at such meeting and said agreement signed and delivered and said assets delivered and said notes signed and delivered without the knowledge or consent of these defendants or either of them.

And these defendants further severally answering say, that no proceedings have been had at law upon the three notes above mentioned or either of them, and that said plaintiff has not reduced his said claim founded upon the note set out in his amended bill to judgment in any court.

And these defendants further severally answering say, that they are informed and believe it to be true and therefore aver that by reason of the facts hereinbefore set forth these defendants are not and cannot be held liable under the laws of the United states for the payment of said notes or any portion thereof.

Wherefore, these defendants severally humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

W. H. DeFRANCE,
Solicitor for Defts.

Indorsed: Filed Jun 29, 1901. Geo. H. Thummel, Clerk.

174 Thereupon afterwards, to-wit:—On the 2nd day of August, 1901, Answer of Union National Bank to Amended Bill of Complaint was filed in said case, which said Answer is in words and figures following, to-wit:—

United States Circuit Court Within and for the District of Nebraska.

Sumner Wallace, Complainant,
vs.
American National Bank, et al., Defendants.

Answer of the Union National Bank to the Amended Bill of Complaint.

Comes now the Union National Bank and for answer to the amended Bill of Complaint filed herein says, that it admits each and every allegation in said Bill of Complaint contained; and especially referring to that part of said Bill which alleges that this answering defendant is also a creditor of said American National Bank it admits said allegation to be true, and alleges that it is one of the creditors of said American National Bank, and adopts said Bill of Complaint and its allegations with reference to the liability of the stockholders of said Bank to the payment of the debts due the creditors of the same, and admits that it is still the owner and holder of two of the said three $67,000.00 notes alleged in said Amended Bill of Complaint to have been given by the said American National Bank under and by virtue of the agreement set out in said Amended Bill of Complaint, and that it herewith sets up and files its claim as such creditor, which claim arises as follows:

175 That at the time of the giving of the note set out in said Amended Bill of Complaint, and now owned by the Complainant, to-wit: on December 23rd, 1895, in addition to the said note set out in said Amended Bill of Complaint, the said American National Bank, under and by virtue of the contract set out in said Amended Bill of Complaint, made, executed and delivered to this answering defendant, the Union National Bank, its two certain other promissory notes for the said sum of $67,000.00 each, one payable two years after date, and the other three years after date, copies of which notes, with all endorsements thereon are as follows:

"$67,000.00 Omaha, Neb., Dec. 23", 1895.

Two years after date, for value received, we promise to pay to The Union National Bank, Sixty-seven Thousand Dollars

at its Banking Office in Omaha, Neb., with interest at 6 per cent per annum from date, payable quarterly until paid.

THE AMERICAN NATIONAL BANK,
Attest: By Thos. L. Kimball, President.
Henry F. Wyman, Cas.

No. 7398.
Due Dec. 23, 1897".

Endorsed: Int. paid to Mar. 23, 1896,
Int. paid to June 23, 1896,
Int. paid 2-17-97 to Sept. 23, 1896,
4-16-97 Int. paid to Mch. 23, 1897".

$67,000. Omaha, Neb., Dec. 23, 1895.

Three years after date for value received, we promise to pay to The Union National Bank Sixty Seven Thousand Dollars at its Banking Office in Omaha, Neb., with interest at 6 per cent per annum from date payable quarterly until paid.

THE AMERICAN NATIONAL BANK,
Attest: By Thos. L. Kimball, Pres.
Henry F. Wyman, Cas.

No. 7399.
Due Dec. 23, 1898.

176 Endorsed: "Int. paid to Mch. 23, 1896,
Int. paid to June 23, 1896,
Int. paid to Dec. 23, 1896.
4-16 Int. paid to Mch. 23, 1897".

And this answering defendant says that it is still the legal owner and holder of said notes and entitled to the proceeds thereof.

That no part of said notes has been paid, except the interest on each of said notes has been paid to March 23, 1897.

That under and by virtue of an agreement set out in said Amended Bill of Complaint between the said American National Bank and this answering defendant all of said notes, including the one owned by the complainant, were to become due and payable at once upon the non-payment of any of said notes when due, and that all of said notes were due at the commencement of this action; and there is now owing from the said American National Bank, and from the stockholders thereof who are made defendants in this action, to this answering defendant the sum of $134,000.00, together with interest thereon at the rate of six per cent per annum from the 23rd day of March, 1897, according to the tenor and effect of said notes.

And this answering defendant and claimant further says that it admits that at the time of the giving of the note described in said amended Bill of Complaint, the said American National Bank delivered to Thomas L. Kimball, as Trustee, certain notes and property as security to the notes sued on therein and to the other notes given to this answering defendant at the same time, and that said Trustee was to collect such security and apply the proceeds thereof to the payment of said notes, and that this defendant claims in this action, as a creditor and as one of the creditors for and on behalf
177 of whom the said complainant brings his suit, all of the benefits arising and accruing from and by virtue of said agreement between the said American National Bank and the said Union National Bank, as fully set out in said Amended Bill of Complaint.

And this answering defendant admits that the assets covered by said agreement should, as alleged in said amended Bill of Complaint, be brought into this Court to be and abide the order of this Honorable Court in and about the same, as equity and good conscience may require, so that full and complete justice may be done herein in the assessment and judgment prayed in said Amended Bill of Complaint, and in the final liquidation of said Bank, and in the distribution of its assets in the final decree herein.

And this answering defendant further alleges and says that under the distribution of said assets, by and under the direction of this Court, and the proper application made of the proceeds thereof to the payment of the indebtedness due the said Complainant and this answering defendant that proper and necessary assessments should be made against the stockholders of said American National Bank as requested and prayed for in the said Amended Bill of Complaint.

Wherefore this answering defendant and claimant prays that the amount due upon said notes hereinbefore set out may be ascertained, and that said amount may be allowed as a claim in favor of the Union National Bank against the said American National Bank; and that the said Union National Bank may be declared by this Honorable Court to be one of the creditors of said American National Bank, for whose benefit said
178 Complainant avers his action was brought; and that the said Union National Bank, complainant, may have its claim allowed against the said American National Bank and may have and receive all of the benefits as such creditor prayed for by the Complainant herein for and on behalf of himself and all other creditors of said American National Bank; and

the said Union National Bank, claimant herein, prays for such other and further equitable relief as may be just and proper.

UNION NATIONAL BANK,
By Hall & McCulloch,
James H. Macomber,
Its Attorneys.

Indorsed: Filed Aug. 2, 1901. Geo. H. Thummel, Clerk.

179 Thereupon afterwards, to-wit:—On the 2nd day of August, 1901, Replication was filed in said case, which said Replication is in words and figures following, to-wit:—

U. S. Circuit Court,
District of Nebraska.

In the Circuit Court of the United States, in and for the District of Nebraska. In Equity.

Sumner Wallace,
No. 261. vs. Doc. "T".
American National Bank, et al.

The replication of Sumner Wallace plaintiff to the answer of each and all defendants who have answered said Amended Bill.

The replicant, saving and reserving to himself, all, and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answers of the defendants, for replication thereunto, says that he does and will aver, maintain and prove his said Amended Bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answers of the said defendants are very uncertain, evasive and insufficient in the law to be replied unto by the replicant; without that, that any other matter or thing in the said answers contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true; all which matters and things the replicant is ready to aver, maintain and prove, as this honorable Court shall direct, and humbly pray as in and by his said Amended Bill he has already prayed.

HALL & McCULLOCH, &
JAMES H. MACOMBER,
Solicitors for Complainant.

Indorsed: Filed Aug. 2, 1901. Geo. H. Thummel, Clerk.

180 Thereupon afterwards, to-wit:—On the 1st day of July, 1902, Stipulation was filed in said case, which said Stipulation is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

Sumner Wallace, Plaintiff,
Doc. "T". vs. No. 261.
American National Bank, et al., Defendant.

Stipulation.

It is stipulated by and between the plaintiff and George G. Wallace, one of the defendants, that the joint and several answer of Elmer C. Brownlee filed February 4, 1901, may be so amended as to become and be an answer also for said George G. Wallace, and that the replication of the plaintiff heretofore filed to said joint and several answer, become and be a replication as to said George G. Wallace.

HALL & McCULLOCH,
Attorneys for Plaintiff.
HOWARD B. SMITH,
Attorney for George G. Wallace.

Indorsed: Filed Jul. 1, 1902. Geo. H. Thummel, Clerk.

181 Thereupon afterwards, to-wit:—At the May 1902 Term of said Court, and on the 1st day of July, 1902, the following proceedings were had and done in said case, as appear of record in Journal No. 1 of said Court, to-wit:—

Sumner Wallace,
261—T. vs.
American National Bank, et al.

This cause came to be heard and was fully argued by the attorneys for the respective parties and was submitted to the Court on the proofs.

182 Thereupon afterwards, to-wit:—On the 1st day of September, 1902, Memorandum Opinion was filed in said case, which said Memorandum Opinion is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

Sumner Wallace,
No. 261. vs. Doc. "T".
American National Bank, et al.

Memorandum Opinion.

Munger, D. J.

In this case I have concluded that before any adjudication can be made upon the question of the individual liability of the stockholders, all of the assets of the American National Bank must be disposed of; such seems to be the view taken by the Court of Appeal- in the 4th Circuit, in Williamson, et al., vs. American Bank, et al., 115th Federal 793. Before passing upon the question of the personal liability of the stockholders, the assets of the American National Bank must be disposed of. With this purpose in view, an order will be made directing the Trustee to dispose of the remaining assets at public sale, giving at least thirty days notice thereof by publication in both the Omaha World-Herald and Bee, and notice to each creditor and stockholder.

Counsel for complainant will prepare the proper order for this purpose.

Indorsed: Filed Sep. 1, 1902. Geo. H. Thummel, Clerk.

183 Thereupon afterwards, to-wit: At the November 1902 Term of said Court, and on the 9th day of December, 1902, the following Order Confirming Sale of Assets was signed and filed in said case and duly entered of record in Journal No. 1 of said Court, to-wit:

Sumner Wallace, Complainant,
No. 261. vs. Doc. "T".
The American National Bank, et al., Defendants.

Order Confirming Sale of Assets.

The report of James Burness, Trustee, having been filed in this Court on the 25th day of November, 1902, showing that on the 18th day of November, 1902, he sold at public sale to the Union National Bank of Omaha, Nebraska, for the sum of Eight Thousand Dollars, all of the assets of the American National Bank remaining in his hands as Trustee, including all the real estate owned by said American National Bank at the time it went into voluntary liquidation and still remaining unsold, and all notes, mortgages, securities and judgments

and other claims of said Bank of every description held against any and all persons whomsoever, which assets are fully described in detail in said report; and it appearing by the Court that the time limited by the Court in which objection to said sale should be filed has expired, and that no such objections have been filed, and that said sale was made in all respects in accordance with law and the course and practice of this Court, and in the manner provided by the order of this Court, therefore, it is by the Court

184 Ordered, Adjudged and Decreed that the said report of the said James Burness, Trustee, and the said sale by him made as set forth in his said report be, and the same is hereby approved and confirmed; and it is further

Ordered, Adjudged and Decreed that the said Trustee, upon the payment to him of said purchase price, make proper and legal assignments of all of the notes, mortgages, securities and judgments and other claims, and due, proper and legal conveyance or conveyances by deed of all the real estate so sold to the purchaser, such notes, mortgages, securities, real estate and other claims thus sold by said Trustee, confirmed by this Court and referred to herein being fully set out in detail in the report of said sale filed herein on the 25th day of November, 1902. It is further

Ordered that said Trustee account to this Court for the said $8,000 so received by him as the proceeds of said sale, together with the proceeds of any other property sold by him since his last report and prior to such sale, in his next report as Trustee to be filed.

W. H. MUNGER, Judge.

Indorsed: Filed Dec. 9, 1902. Geo. H. Thummel, Clerk.

185 Thereupon afterwards, to-wit: At the November 1902 Term of said Court and on the 3rd day of January, 1903, the following Order was signed and filed in said case, and duly entered of record in Journal No. 2 of said Court, to-wit:

Sumner Wallace, Complainant,
vs.
American National Bank, et al., Defendants.

Order Confirming Final Report of Trustee.

This cause this day came on for hearing upon the report of James Burness, Trustee, filed herein on the 27th day of December, 1902, praying for the allowance of the same and for his discharge:

Upon consideration whereof the Court finds that said report is in all things a correct and true report of the acts and doings of said trustee since his last report, filed December 19th, 1901;

The Court further finds that all parties in interest were duly notified of the filing of said report and that the same would come before the Court this 3d day of January, 1903, for approval or other order, and that no objections to the same have been filed but that certain defendants made oral objections to the allowance of the Trustee's fees for the year last past, to-wit: the sum of Nine Hundred Dollars, for the reason that said Trustee in addition to his duties as such had also been doing work for the Union National Bank; and the said Complainant, and the said Union National Bank agreeing thereto in open Court, the Court finds that Nine Hundred
186 Dollars ($900.00) of said compensation so charged in said report by said Trustee should be disallowed and the sum paid over and credited upon the notes of said Complainant and said Union National Bank, thus making the amount paid since the filing of the previous report, the sum of Fourteen Thousand Six Hundred Thirty-seven and 86-100 Dollars, ($14637.86) instead of Thirteen Thousand Seven Hundred Thirty-seven and 36-100 ($13737.86) as shown by the report now under consideration, it is therefore

Ordered, Considered and Adjudged by the Court that said report of said Trustee be and is hereby in all things confirmed except that the indebtedness of the American National Bank to the Complainant and the Union National Bank shall be credited with the sum of Fourteen Thousand Six Hundred Thirty-seven and 86-100 Dollars ($14637.86) instead of Thirteen Thousand Seven Hundred Thirty-seven and 86-100 Dollars ($13737.86) as shown in said report, and it is further

Ordered that said James Burness, having disposed of all the assets of the American National Bank under orders of this Court and he having no further duties to perform as such Trustee, is hereby discharged from his trust and his bond given in that behalf is hereby released and discharged.

By the Court,

W. H. MUNGER, Judge.

January 3d, 1903.

Indorsed: Filed Jan. 3, 1903. Geo. H. Thummel, Clerk.

187 Thereupon afterwards, to-wit: On the 24th day of April, 1903, Memorandum Opinion was filed in said case, which said Memorandum Opinion is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

Sumner Wallace, Complainant,
No. 261 "T". v.
American National Bank, et al., Respondents.

Memorandum Opinion.

Munger, D. J.

Under the facts in this case it appears that in December 1895, the board of directors of the American National Bank, while believing that the assets of the bank were amply sufficient to pay its liabilities, were fearful that its cash resources would be insufficient to meet the demands which would likely be made upon it during the coming period of a few days, and, further believing that it was for the interests of the bank that it should cease to do further business, they entered into a contract with the Union National Bank, by the terms of which they disposed of to the Union National Bank their furniture and certain assets, the Union National Bank agreeing to assume and pay off all of the liabilities of the American National Bank. As a consideration for the Union National Bank's assuming and paying the liabilities of the American National Bank, the American National Bank, in addition to the assets which it sold absolutely to the Union National Bank, executed to the Union National Bank, its three non-negotiable notes, payable in one, two and three years, and pledged as security for
188 the payment thereof the remaining assets of the bank, which were placed in the hands of Thomas Kimball, President of the American National Bank, as trustee, the proceeds of the assets to be applied in discharge of said notes. This contract was executed. The Union National Bank, in pursuance of its agreement, liquidated and paid off the entire indebtedness of the American National Bank. Subsequent to this agreement on the part of the board of directors a stockholder's meeting was held of the American National Bank, at which meeting it was voted to go into voluntary liquidation, and Thomas L. Kimball, was selected as the trustee in that behalf, and such voluntary liquidation was authorized by the Comptroller of the Currency. One of the notes so given to the Union National Bank was sold and transferred to complainant, Sumner Wallace, who has brought this action under the provisions of the Act of Congress of June 30, 1876, page 63, Vol. 19, Statutes at Large, Complied Statutes United States, Vol. 3, page 3509 to enforce the stockholders' liability.

The only questions I deem necessary to be considered at this time are: first, was the indebtedness of the Union National Bank evidenced by said notes such an indebtedness as the bank

was authorized to incur, or was said contract ultra vires and not within any of the authorized powers of the bank; and second, was such indebtedness, if authorized and not ultra vires, such an indebtedness that the stockholders are liable for.

In deciding the first question it is necessary to determine the nature and character of the indebtedness. While the contract referred to speaks of it as a guaranty upon the part of the American National Bank, yet its character is to be determined by the actual transaction. In regard to a contract in
189 this respect similar to the one under consideration the Court of Appeals of the Eighth Circuit, in Schofield v. State National Bank of Denver, 97 Fed. Rep. 282, Sanborn, C. J., writing for the Court, held that the transaction was, as to the Union National Bank a loaning of money. If then the transaction was a loan on the part of the Union National Bank to the American National Bank, it must have been a borrowing on the part of the American National, for whenever there is a loaning of money by one party there must be a borrowing by the other. I conclude, then, that the transaction was a lending of money by the Union National Bank to the American National Bank, and a borrowing of money by the American National from the Union National. Was such borrowing of money on the part of the American National ultra vires its charter powers? In Auten v. United States Bank of New York, 174 U. S. 125 and Aldrich v. Chemical National Bank 176 U. S. 618, it was held that the borrowing of money was not out of the usual course of banking business. In view of these pronouncements by the Supreme Court, I hold that the borrowing of money by the American National Bank from the Union National Bank was not ultra vires. It is insisted, however, that because the borrowing of money in the case was in contemplation of ceasing to do business, on the part of the American National Bank, and not in the usual business as a going concern, and from the further fact that the time of payment was extended over a period of three years, it was not such a borrowing as was authorized by the charter, and, hence the contract as evidenced by the notes in question was void.

The borrowing of the money was to pay the legitimate demands of the American National Bank to tide over an existing emergency, and with a view of enabling the bank to liquidate its affairs without loss. I am of the opinion that such a
190 borrowing was not beyond the powers of the bank, and that the promise to repay, as evidenced by the notes, was not an ultra vires obligation of the bank.

The second question, as to whether such obligation is one for which the stockholders are to be held individually liable,

is not free from doubt. In Shrader v. Manufacturers Bank, 133 U. S. 67, it was said by Justice Blatchford, rendering the opinion, that the debt or obligation for which the stockholders were liable, was such a debt or obligation as was incurred in the usual and ordinary course of banking. In that case, however, the indebtedness of the bank for which it was sought to hold the stockholders liable, was one incurred by the President after the bank had gone into liquidation, and it was held that the President possessed no power to bind the bank by a contract after it had gone into liquidation. The case of Shrader v. Manufacturers Bank was cited by Chief Justice Fuller in Ward v. Joslyn, 186 U. S. 142, and the same expressions used. That was a case in which it was sought to hold the stockholders liable upon a guaranty made by the Western Investment Loan & Trust Company, not upon an obligation negotiated by said Western Investment Loan & Trust Company, but a mere accommodation guaranty, and it was held that such accommodation guaranty was not within the charter powers of the Western Investment, Loan & Trust Company, and that the mere fact that a judgment had been obtained against the Investment Loan & Trust Company, or the fact that such Company might upon principles of estoppel be liable upon the guaranty, yet this did not prevent the stockholders from showing the true nature of the transaction, and that the obligation was one ultra vires the Loan & Trust Company. So that in these
191 cases the facts were, and the judgment of the court was, that under the facts the debt or obligation was not one which the corporation had authority to incur, and hence, being an ultra vires obligation, the stockholder was not liable. It is true, that from the expressions in the opinions it would appear that there might be obligations contracted upon the part of the bank which were not ultra vires the bank, but so far out of the usual and ordinary course of banking that the stockholders would not be individually liable therefor, notwithstanding the corporation would be liable upon such obligations.

The rule as stated by Judge Sanborn, in King, Receiver, of the First National Bank of Frankfort, Kansas, v. J. P. Pomeroy (decided by the Court of Appeals, March 9, 1903, and authorities cited) as follows: "The authority of general expressions and broad statements in the opinions of courts is always limited to the specific questions which they were considering and deciding when they were used", must be applied in considering the cases of Shrader v. Manufacturers Bank and Ward v. Joslyn, and as applied to those cases they are merely a holding that an indebtedness which the corporation was not authorized to incur is not an indebtedness in the usual course of business, and hence the stockholders are not liable therefor.

Having reached the conclusion in this case that the indebtedness evidenced by the notes, and which is the foundation of this action, was a borrowing of money by the American National Bank from the Union National Bank, and that such borrowing of money was within the authorized powers of the American [Natioanl] Bank, it follows that the indebtedness is one for which the stockholders may be held liable.

192 In the contract, however, between the American National Bank and the Union National Bank it was provided that the Union National Bank would liquidate the assets of the American National which it did not take and accept as cash, without charge or expense to the American National Bank, except such court charges and attorney's fees as might be found necessary, and that such liquidation should be conducted under the direction of Thomas L. Kimball, or such other person as might be agreed upon on behalf of the stockholders of the American National Bank. Under this provision it becomes necessary to consider some of the items of expense in liquidating such assets which under the evidence have been charged to the American National Bank. From such expenses the following items will be eliminated:

Readjusting two loans,	$ 50.52
Examining land, Boone County, Nebraska,	12.30
Cleaning and tuning pianos,	67.95
Collecting Holdrege bond coupons,	10.62
Exchange, express, etc.,	16.80
Fitting up vault case,	41.20
Robinson's chattels,	114.50
Traveling expenses,	96.16
Horse and buggy appraisals,	9.50
Telegrams,	7.93
Salaries,	6,514.39
Real Estate commission,	85.00
Abstracts of title,	106.20
Recording deeds,	29.55
Postage,	130.34

193 With these deductions, Counsel for complainant will compute the amount due upon said notes, submit the same to Counsel for the several answering respondents, and prepare the proper decree, providing for the amount of judgment against each of the respondents, and the same may be submitted to the court for signature on the 2nd day of May, at 10 o'clock A. M., when all the parties may be present and will be heard as to the correctness of the computations herein provided for, and as to the form of decree.

Indorsed: Filed Apr. 24, 1903. Geo. H. Thummel, Clerk.

194 Thereupon afterwards, to-wit: At the May 1903 Term of said Court, and on the 23rd day of May, 1903, the following Decree was signed and filed in said case, and entered of record on the Journal of proceedings of said court had on said day, to-wit:

Sumner Wallace, Complainant,

vs.

American National Bank, a corporation, The McCague Investment Company, a corporation, Thomas H. McCague, Alex. G. Charlton, Elmer C. Brownlee, Elizabeth Dufrene, Executrix of the last will and testament of Alfred R. Dufrene, deceased, Edgar M. Morsman, Philip Mergin, George G. Wallace, William S. Poppleton, John S. King, William Wallace, Charles F. Manderson, Anna C. Crowell, Charles C. George, George W. McClellan, Executor of the last will and testament of Robert H. McClellan, deceased, Peter Frenzer, John N. Frenzer, Charles H. Walworth, Frank W. Wessells, Frank Graham, James H. McCulloch, John P. Charlton, C. W. Morton, Royal Wilson, Jacob Wead, James J. Brown, Jr., James J. Woodward, Viola Coffin, Howard B. Smith, Edward G. Glenn, Emily J. Robinson, James H. Morton, George Morton, Mary E. Morton, William Wilson, Henry F. Wyman, Albert U. Wyman, F. R. McConnell, Trustee, John Speer, John E. Patrick, R. L. Brownlee, Caroline Carpenter, William C. Beer, Marcus C. Acheson, George Marples, Arthur H. Flack, Meade C. Williams, James H. Conrad, T. R. Neal, J. H. Hawkins, William Baird, The Manufacturers' National Bank of Boston, Mass., a corporation, John L. McCague, Morris Levy, National Bank Building Company of America, a corporation, John L. McCague and Thomas H. McCague, William L. McCague and Alex. H. Charlton partners doing business under the firm name and style of McCague Bros., Rufus B. Bullock, Thomas L. Kimball, Thomas L. Kimball, Trustee, Alex. G. Charlton, Secretary, Samuel Blackwell, and the Union National Bank of Omaha, Nebraska, Defendants.

This cause came on to be heard at the May, 1903 Term of this court upon the Amended Bill of complainant, Sumner Wallace, suing for himself and on behalf of all other creditors of the American National Bank, and the answer and claim of the Union National Bank, and the answers of the various respond-

ents and the replications filed thereto, and the arguments of counsel, and was submitted to and taken under advisement by the court.

195 And now on this 16th day of May, 1903, after full consideration of the pleadings, evidence and arguments of counsel the court finds, that the following named defendants were stockholders of the said American National Bank on or about the month of February 1895, and held the number of shares set opposite their respective names, as follows:

Thomas H. McCague	10	Shares
Alex. G. Charlton	9	"
Elmer C. Brownlee	10	"
Alfred R. Dufrene	75	"
Edgar M. Morsman	75	"
Philip Mergin	7½	"
George G. Wallace	75	"
William S. Poppleton	56¼	"
John S. King	2	"
William Wallace	20	"
Charles F. Manderson	10	"
Anna C. Crowell	9 3-4	"
Chas. C. George	15	"
Robert H. McClellan	50	"
Peter Frenzer	15	"
John N. Frenzer	5	"
Charles H. Walworth	22½	"
Frank W. Wessels	3 3-4	"
Frank Graham	3 3-4	"
James H. McCulloch	25	"
John P. Charlton	7½	"
C. W. Morton	6	"
Royal Wilson	10	"
Jacob Wead	7½	"
James J. Brown, Jr.	5	"
James J. Woodward	2½	"
Viola Coffin	7½	"
Howard B. Smith	50	"
Edward G. Glenn	5	"
Emily J. Robinson	1½	"
James H. Morton	2	"
George Morton	1	"
Mary E. Morton	1	"
William Wilson	11¼	"
Henry F. Wyman	58½	"
A. U. Wyman	10	"
F. R. McConnell, Trustee,	5	"

	John Speer	10	"
	John E. Patrick	15	"
	R. L. Brownlee	25	"
	Miss Caroline Carpenter	18	"
	W. S. Beer	6	"
	Marcus C. Acheson	15	"
	George Marples	15	"
	Arthur H. Flack	5	"
	Meade C. Williams	11¼	"
	James H. Conrad	10	"
	T. R. Neal	10	"
	J. H. Hawkins	25	"
196	William Baird	10	Shares
	The Manufacturers' National Bank,	25	"
	John L. McCague	287	"
	Morris Levy	50	"
	National Bank Bldg. Co. of America	615	"
	McCague Bros.	50	"
	Rufus B. Bullock	22½	"
	Thomas L. Kimball	20	"
	Alex. G. Charlton, Secretary	20	"
	Samuel Blackwell	50	"

That the stock standing in the name of Alex G. Charlton, Secretary, belonged to and was the property of the McCague Investment Company, defendant herein.

That the amount of the capital stock of said American National Bank is the sum of Two Hundred Thousand dollars ($200,000.00), divided into two thousand (2,000) shares of one hundred dollars ($100.00) each.

That all of the assets of said American National Bank have been exhausted.

That the amount of the indebtedness of said American National Bank remaining after all of the assets were exhausted and applied upon the indebtedness of said American National Bank is the sum of $194,466.35-100.

That the amount due the said complainant, Sumner Wallace, from said American National Bank and the stockholders thereof, upon the note assigned to him by the Union National Bank is the sum of $46524.83-100.

That there is due from the American National Bank and the said stockholders thereof to the Union National Bank upon the two promissory notes held by it the sum of $147941.52-100.

That the amount due upon each share of stock, and for which each stockholder is liable upon each share held by him is the sum of $97.23-100.

197 That each defendant stockholder of the said American National Bank is liable [retably] according to the shares held by each, to said Sumner Wallace and the said Union National Bank as follows:

That of said amount there is due

From the American National Bank to the complainant, Sumner Wallace, the sum of	$46524.83	
From the American National Bank to the said Union National Bank, the sum of		$147941.52
From the McCague Investment Company to the complainant, Sumner Wallace, the sum of	$ 465.20	
From the McCague Investment Company to the said Union National Bank the sum of		$ 1479.40
From Thomas H. McCague to the complainant Sumner Wallace, the sum of	$ 232.60	
From Thomas H. McCague to the said Union National Bank, the sum of		$ 739.70
From Alex. G. Charlton to the complainant, Sumner Wallace, the sum of	$ 209.34	
From Alex. G. Charlton to the said Union National Bank, the sum of		$ 665.73
From Elmer C. Brownlee, to the [complainant] Sumner Wallace, the sum of	$ 232.60	
From Elmer C. Brownlee, to the said Union National Bank the sum of		$ 739.70
From Elizabeth Dufrene, Executrix of the last will and testament of Alfred R. Dufrene to the complainant, Sumner Wallace, the sum of	$ 1744.50	
From Elizabeth R. Rufrene, Executrix of the last will and testament of Alfred R. Dufrene to the said Union National Bank, the sum of		$ 5547.75
From Edgar M. Moreman, to the complainant, Sumner Wallace, the sum of	$ 1744.50	
From Edgar M. Moreman to the said Union National Bank the sum of		$ 5547.75
From Philip Mergin, to the complainant, Sumner Wallace, the sum of	$ 174.45	
From Philip Mergin, to the said Union National Bank.. the sum of		$ 554.77
[198]		
From George G. Wallace to the complainant Sumner Wallace, the sum of	$ 1744.50	
From George G. Wallace to the said Union National Bank the sum of		$ 5547.75
From William S. Poppleton to the complainant, Sumner Wallace, the sum of	$ 1308.37	
From William S. Poppleton to the said Union National Bank the sum of		$ 4160.81
From John S. King to the complainant, Sumner Wallace, the sum of	$ 46.52	
From John S. King to the said Union National Bank the sum of		$ 147.94
From Charles F. Manderson to the complainant Sumner Wallace, the sum of	$ 232.60	
From Charles F. Manderson to the said Union National Bank the sum of		$ 739.70
From Anna C. Crowell to the complainant, Sumner Wallace the sum of	$ 226.77	

From Anna C. Crowell to the said Union National Bank the sum of		$ 721.20
From Charles C. George to the complainant, Sumner Wallace the sum of	$ 348.90	
From Charles C. George to the said Union National Bank the sum of		$ 1169.55
From George W. McClellan, Executor of the last will and testament of Robert H. McClellan, to the [complainant], Sumner Wallace the sum of	1163.60	
From George W. McClellan, Executor of the last will and testament of Robert H. McClellan, to the said Union National Bank the sum of		$ 3698.50
From Peter Frenzer to the complainant, Sumner Wallace, the sum of	$ 348.90	
From Peter Frenzer to the said Union National Bank the sum of		$ 1169.5.
From John N. Frenzer to the complainant, Sumner Wallace, the sum of	$ 116.30	
From John N. Frenzer to the said Union National Bank the sum of		$ 369.85
From Charles H. Walworth, to the complainant, Sumner Wallace, the sum of	$ 523.35	
[199]		
From Charles H. Walworth to the said Union National Bank the sum of		$ 1664.22
From Frank W. Wessells to the complainant Sumner Wallace, the sum of	$ 87.21	
From Frank W. Wessells to the said Union National Bank the sum of		$ 277.38
From Frank Graham to the complainant, Sumner Wallace, the sum of	$ 87.21	
From Frank Graham to the said Union National Bank the sum of		$ 277.38
From James H. McCulloch to the complainant, Sumner Wallace, the sum of	$ 581.50	
From James H. McCulloch to the said Union National Bank the sum of		$ 1849.35
From Charles W. Morton to the complainant, Sumner Wallace, the sum of	$ 138.56	
From Charles W. Morton, to the said Union National Bank the sum of		$ 443.82
From James J. Woodward to the complainant, Sumner Wallace the sum of	$ 58.15	
From James J. Woodward to the said Union National Bank the sum of		$ 184.92
From Viola Coffin to the complainant Sumner Wallace, the sum of	$ 174.45	
From Viola Coffin to the said Union National Bank the sum of		$ 554.77
From Howard B. Smith, to the complainant Sumner Wallace, the sum of	$ 1163.60	
From Howard B. Smith to the said Union National Bank the sum of		$ 3698.50
From Emily J. Robinson to the complainant, Sumner Wallace the sum of	$ 34.89	
From Emily J. Robinson to the said Union National Bank, the sum of		$ 110.95
From James H. Morton to the complainant, Sumner Wallace, the sum of	$ 46.52	
From James H. Morton to the said Union National Bank the sum of		$ 147.94
From George Morton to the complainant, Sumner Wallace the sum of	$ 23.26	

[200]

From George Morton to the said Union National Bank the sum of		$ 73.97
From Mary E. Morton to the complainant, Sumner Wallace the sum of	$ 23.26	
From Mary E. Morton to the said Union National Bank the sum of		$ 73.97
From Henry F. Wyman to the complainant Sumner Wallace, the sum of	$ 1354.89	
From Henry F. Wyman, to the said Union National Bank the sum of		$ 4308.75
From Albert U. Wyman to the complainant, Sumner Wallace the sum of	$ 232.60	
From Albert U. Wyman to the said Union National Bank, the sum of		$ 739.70
From F. R. McConnell, Trustee, to the complainant, Sumner Wallace, the sum of	$ 116.30	
From F. R. McConnell, Trustee, to the said Union National Bank the sum of		$ 369.85
From John Speer to the complainant, Sumner Wallace, the sum of	$ 232.60	
From John Speer to the said Union National Bank the sum of		$ 739.70
From John E. Patrick to the complainant, Sumner Wallace, the sum of	$ 348.90	
From John E. Patrick, to the said Union National Bank the sum of		$ 1109.55
From R. L. Brownlee to the complainant, Sumner Wallace, the sum of	$ 581.50	
From R. L. Brownlee to the said Union National Bank the sum of		$ 1849.25
From Caroline Carpenter to the complainant, Sumner Wallace, the sum of	$ 418.68	
From Caroline Carpenter to the said Union National Bank the sum of		$ 1331.46
From William C. Beer to the complainant, Sumner Wallace, the sum of	$ 139.56	
From William C. Beer to the said Union National Bank the sum of		$ 443.82
From George Marples to the complainant, Sumner Wallace, the sum of	$ 348.90	

[201]

From George Marples to the said Union National Bank the sum of		$ 1109.55
From James H. Conrad to the complainant, Sumner, Wallace, the sum of	$ 232.60	
From James H. Conrad to the said Union National Bank, the sum of		$ 739.70
From T. R. Neal to the complainant, Sumner Wallace, the sum of	$ 232.60	
From T. R. Neal to the said Union Natonal Bank the sum of		$ 739.70
From J. H. Hawkins, to the complainant, Sumner Wallace, the sum of	$ 581.50	
From J. H. Hawkins to the said Union National Bank the sum of		$ 1849.25
From William Baird to the complainant, Sumner Wallace, the sum of	$ 232.60	
From William Baird to the said Union National Bank the sum of		$ 739.70

From John L. McCague to the complainant, Sumner Wallace, the sum of	$ 6675.62	
From John L. McCague to the said Union National Bank, the sum of		$ 21229.39
From Morris Levy to the complainant, Sumner Wallace the sum of	$ 1163.00	
From Morris Levy to the said Union National Bank the sum of		$ 3698.50
From National Bank Building Company of America, to the complainant, Sumner Wallace, the sum of	$14304.90	
From National Bank Building Company of America to the said Union National Bank the sum of		$ 45491.55
From John L. McCague, Thomas H. McCague, William L. McCague and Alex. G. Charlton, partners doing business under the firm name and style of McCague Bros., to the complainant, Sumner Wallace, the sum of	$ 1163.00	
From John L. McCague, Thomas H. McCague, William L. McCague and Alex. G. Charlton, partners doing business under the firm name and style of McCague Bros., to the said Union National Bank the sum of		$ 3698.50
[202]		
From Rufus B. Bullock to the complainant, Sumner Wallace, the sum of	$ 523.35	
From Rufus B. Bullock, to the said Union National Bank the sum of		$ 1664.32

The court further finds that the following named stockholders have not been served personally within this state, but beyond this circuit, and have not appeared herein, but are liable ratably according to the shares held by each to said Sumner Wallace and the Union National Bank as follows:

From William Wallace to the complainant Sumner Wallace, the sum of	$ 462.20	
From William Wallace to the said Union National Bank the sum of		$ 1479.40
From John P. Charlton to the complainant, Sumner Wallace the sum of	$ 174.45	
From John P. Charlton to the said Union National Bank the sum of		$ 554.77
From Jacob Wead to the complainant, Sumner Wallace, the sum of	$ 174.45	
From Jacob Wead to the said Union National Bank the sum of		$ 554.77
From Edward G. Glenn to the complainant Sumner Wallace, the sum of	$ 116.30	
From Edward G. Glenn to the said Union National Bank the sum of		$ 369.85
From William Wilson to the complainant, Sumner Wallace, the sum of	$ 261.67	
From William Wilson to the said Union National Bank the sum of		$ 832.16
From Arthur H. Flack to the complainant, Sumner Wallace, the sum of	$ 116.30	
From Arthur H. Flack, to the said Union National Bank the sum of		$ 369.85
From Meade C. Williams, to the complainant, Sumner Wallace the sum of	$ 261.67	

From Meade C. Williams to the said Union National Bank, the sum of		$ 832.16
From Manufacturers' National Bank to the complainant, Sumner Wallace the sum of	$ 581.50	
[203]		
From Manufacturers' National Bank to the said Union National Bank the sum of		$ 1849.25
From Samuel Blackwell to the complainant, Sumner Wallace, the sum of	$ 1163.00	
From Samuel Blackwell to the said Union National Bank the sum of		$ 3698.50
From Marcus C. Acheson to the complainant, Sumner Wallace the sum of	$ 348.90	
From Marcus C. Acheson to the said Union National Bank the sum of		$ 1109.55

Wherefore it is ordered, adjuded and decreed by the court that the complainant Sumner Wallace, have and recover of each of the said defendant stockholders as follows, to-wit:

From the American National Bank the sum of	$ 46524.83
From the McCague Investment Co. the sum of	$ 465.20
From Thomas H. McCague the sum of	$ 232.60
From Alex G. Charlton the sum of	$ 209.34
From Elmer C. Brownlee the sum of	$ 232.60
From Elizabeth Dufrene, [Executrix] of the last will and testament of Alfred R. Dufrene deceased, the sum of	$ 1744.50
From Edgar M. Morsman the sum of	$ 1744.50
From Philip Mergin, the sum of	$ 174.45
From George G. Wallace the sum of	$ 1744.50
From William S. Poppleton the sum of	$ 1308.37
From John S. King the sum of	$ 46.52
From Charles F. Manderson the sum of	$ 232.60
From Anna C. Crowell, the sum of	$ 226.77
From Charles C. George the sum of	$ 348.90
From George W. McClellan, Executor of the last will and testament of Robert H. McClellan deceased, the sum of	$ 1163.00
From Peter Frenzer the sum of	$ 348.90
From John N. Frenzer the sum of	$ 116.30
From Charles H. Walworth the sum of	$ 523.35
From Frank W. Wessells the sum of	$ 87.21
From Frank Graham the sum of	$ 87.21
From James H. McCulloch, the sum of	$ 581.50
From Charles W. Morton the sum of	$ 139.56
From James J. Woodward the sum of	$ 58.15
From Viola Coffin the sum of	$ 174.45
From Howard B. Smith the sum of	$ 1163.00
From Emily J. Robinson the sum of	$ 34.89
From James H. Morton the sum of	$ 46.52
From George Morton the sum of	$ 23.26
From Mary E. Morton the sum of	$ 23.26
From Henry F. Wyman the sum of	$ 1354.89
From Albert U. Wyman the sum of	$ 232.60
From F. R. McConnell, Trustee, the sum of	$ 116.30
From John Speer the sum of	$ 232.60
From John E. Patrick the sum of	$ 348.90
[204]	
From R. L. Brownlee the sum of	$ 581.50
From Caroline Carpenter the sum of	$ 418.68
From William C. Beer the sum of	$ 139.56
From George Marples the sum of	$ 348.90

From James H. Conrad the sum of	$ 232.60
From T. R. Neal the sum of	$ 232.60
From J. H. Hawkins the sum of	$ 581.50
From William Baird the sum of	$ 232.60
From John L. McCague the sum of	$ 6675.62
From Morris Levy the sum of	$ 1163.00
From National Bank Building Company of America the sum of	$ 14304.90
From John L. McCague, Thomas H. McCague, William L. McCague and Alex. G. Charlton, partners doing business under the firm name and style of McCague Bros., the sum of	$ 1163.00
From Rufus B. Bullock the sum of	$ 523.35

And it is further ordered, adjudged and decreed by the Court that the Union National Bank have and recover of each of said defendant stockholders as follows, to-wit:

From the American National Bank the sum of	$147941.52
From the McCague Investment Co., the sum of	$ 1479.40
From Thomas H. McCague the sum of	$ 739.70
From Alex. G. Charlton the sum of	$ 665.73
From Elmer C. Brownlee the sum of	$ 739.70
From Elizabeth Dufrene, Executrix of the last will and testament of Alfred R. Dufrene, deceased the sum of	$ 5547.75
From Edgar M. Morsman the sum of	$ 5547.75
From Philip Mergin the sum of	$ 554.77
From George G. Wallace the sum of	$ 5547.75
From William S. Poppleton the sum of	$ 4160 81
From John S. King the sum of	$ 147.94
From Charles F. Manderson the sum of	$ 739.70
From Anna C. Crowell the sum of	$ 721.20
From Charles C. George the sum of	$ 1109.55
From George W. McClellan, Executor of the last will and testament of Robert H. McClellan, deceased, the sum of	$ 3698.50
From Peter Frenzer the sum of	$ 1109.55
From John N. Frenzer the sum of	$ 369.85
From Charles H. Walworth the sum of	$ 1664.32
From Frank W. Wessells the sum of	$ 277.38
From Frank Graham the sum of	$ 277.38
From James H. McCulloch the sum of	$ 1849.25
From Charles W. Morton the sum of	$ 443.82
From James J. Woodward the sum of	$ 184.92
From Viola Coffin the sum of	$ 554.77
From Howard B. Smith the sum of	$ 3698.50
From Emily J. Robinson the sum of	$ 110.95
From James H. Morton the sum of	$ 147.94
From George Morton the sum of	$ 73.97
From Mary E. Morton the sum of	$ 73.97
From Henry F. Wyman the sum of	$ 4308.75
From Albert U. Wyman the sum of	$ 739.70
From F. R. McConnell, Trustee the sum of	$ 369.85
[205]	
From John Speer the sum of	$ 739.70
From John E. Patrick the sum of	$ 1109.55
From R. L. Brownlee the sum of	$ 1849.25
From Caroline Carpenter the sum of	$ 1331.46
From William C. Beer the sum of	$ 443.82
From George Marples the sum of	$ 1109.55
From James H. Conrad the sum of	$ 739.70
From T. R. Neal the sum of	$ 739.70
From J. H. Hawkins the sum of	$ 1849.25
From William Baird the sum of	$ 739.70

From John L. McCague the sum of	$ 21229.39
From Morris Levy the sum of	$ 3698.50
From National Bank Building Company of America the sum of	$ 45491.55
From John L. McCague, Thomas H. McCague, William L. McCague and Alex. G. Charlton, partners doing business under the firm name and style of McCague Bros., the sum of	$ 3698.50
From Rufus B. Bullock the sum of	$ 1664.32

Each of said judgments to bear interest at the rate of 6% per annum from May 1st 1903.

It is further ordered, adjudged and decreed by the court, that the defendants against whom the said Sumner Wallace and the Union National Bank are given judgment herein shall pro rata pay the costs of this case, except cost of serving non-resident defendants, taxed at $ and that execution be issued against each of said defendants.

It is further ordered, adjudged and decreed by the court that Gurdon W. Wattles, is hereby appointed Receiver for and authorized to commence suit for and on behalf of Sumner Wallace and the Union National Bank within the proper jurisdiction against the defendant stockholders herein who were not served with summons within this state, and against whom judgment has not been rendered in this case, upon their liability as stockholders of said American National Bank, as found in this decree, and that he make report of his doings from time to time to the court.

And Edgar M. Morsman, one of the defendants, having prayed an appeal and filed an assignment of errors, it is

Ordered that his appeal be and the same hereby is
206 allowed with supersedeas, upon the giving of security to be approved by a Judge of the Court.

And William S. Poppleton, one of the defendants, having prayed an appeal and filed an assignment of errors, it is

Ordered that his appeal be and the same is hereby allowed with supersedeas, upon giving of security to be approved by a Judge of the court.

And each and all of the other defendants against whom judgments are rendered herein, having severally in open court prayed an appeal, it is

Ordered that an appeal be and the same is hereby allowed with supersedeas, upon giving a bond to be approved by a Judge of the Court, or if supersedeas is not desired a cost bond is hereby fixed at two hundred dollars.

By the Court

W. H. MUNGER, Judge.

Dated May 23 1903.

Indorsed: Filed May 23 1903. Geo. H. Thummel, Clerk.

207 Thereupon afterwards, to-wit: On the 30th day of December, 1901, Depositions of William Baird, Charles E. Ford, Henry F. Wyman, James Burness, G. W. Wattles, John L. McCague, J. W. Thomas and H. E. Rainey were filed in said case, which said Depositions are in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

Sumner Wallace, Complainant,
vs.
American National Bank, et al., Respondents.

Notice to Take Depositions.

The above named respondents will take notice that on the 29th day of October, 1901, the said complainant will take the depositions of William Baird, Charles E. Ford, Henry F. Wyman, James Burness, G. W. Wattles, John L. McCague, J. W. Thomas and H. E. Rainey, to be used as evidence on the trial of the above entitled cause, before G. S. Waring, Notary Public, at Court Room No. 2 in the United States Court House and Post Office Building, in the City of Omaha, in the County of Douglas, and State of Nebraska, at the hour of 10 o'clock A. M., with authority to adjourn from day to day until such depositions shall have been taken.

HALL & McCULLOCH,
JAMES H. MACOMBER,
Dated October 22, 1901. Solicitors for complainant.

Service of the annexed notice is hereby accepted this 22nd day of October, 1901.

DEXTER L. THOMAS,
Solicitor for Alfred R. Dufrene, and Elizabeth Dufrene, Executrix.

208 Service of the annexed notice is hereby accepted this 22nd day of October, 1901.

W. H. DeFRANCE,
Solicitor for C. W. Morton, Jas. H. Morton, Mary C. Morton, Geo. Morton.

Service of the annexed notice is hereby accepted this 22nd day of October, 1901.

CHAS. BATTELLE,
Solicitor for Caroline Carpenter, McCague Investment Co., John L. McCague, Thos. H. McCague, Wm. L. McCague, Alex. G. Charlton, Anna C. Crowell, Royal C. Wilson, Emily J. Robinson, Geo. Marples, McCague Bros., Alex G. Charlton, Sec'y, Union National Bank, Rufus B. Bullock, Robt. H. McClennan, John Spear, R. L. Brownlee, J. H. Hawkins,

Service of the annexed notice is hereby accepted this 22nd day of October, 1901.

GUY R. C. READ,
Solicitor for Francis W. Wessells.

Service of the annexed notice is hereby accepted this 22nd day of October, 1901.

JAMES E. KELBY,
Solicitor for Chas. F. Manderson.

Service of the annexed notice is hereby accepted this 22nd day of October, 1901.

HUGH A. MYERS,
Solicitor for T. R. Neal.

Service of the annexed notice is hereby accepted this 22nd day of October, 1901.

PAUL CHARLTON,
Solicitor for Frank Graham.

Service of the annexed notice is hereby accepted this 22nd day of October, 1901.

JOHN D. WARE,
Solicitor for Chas. H. Walworth.

Service of the annexed notice is hereby accepted this 22nd day of October, 1901.

ROBT. W. PATRICK,
Solicitor for John E. Patrick.

209 Service of the annexed notice is hereby accepted this 22nd day of October, 1901.

WM. BAIRD per se

Service of the annexed notice is hereby accepted this 22nd day of October, 1901.

EDGAR M. MORSMAN, Jr.,
Solicitor for Edgar Morsman.

Service of the annexed notice is hereby accepted this 22nd day of October, 1901.

W. S. POPPLETON,
Solicitor for Wm. S. Poppleton.

Service of the annexed notice is hereby accepted this 22nd day of October, 1901.

S. R. RUSH,
Solicitor for Viola Coffin.

Service of the annexed notice is hereby accepted this 22nd day of October, 1901.

HOWARD B. SMITH,
Solicitor for Elmer C. Brownlee, Peter Frenzer, Jno. N. Frenzer, Howard B. Smith, Henry F. Wyman, A. U. Wyman, Chas. C. George.

United States of America,
State and District of Nebraska,
County of Douglas—ss.

I, G. S. Waring, being first duly sworn, on oath say, that on the 22nd day of October, 1901, I served the annexed notice upon L. F. Crofoot, Solicitor for J. I. Woodward, J. C. Cowin, Solicitor for T. R. Neal, Frank Graham and J. I. Woodward, and J. C. Kinsler, by leaving with said L. F. Crofoot, J. C. Cowin and J. C. Kinsler, a true and correct copy of said notice.

G. S. WARING.

210 Subscribed and sworn to before me this 27th day of October, 1901.

[Seal] JOHN NICHOLSON,
Deputy Clerk U. S. Circuit Court.

United States for the District of Nebraska.

Sumner Wallace, Complainant,
No. 261 T. vs.
American National Bank et al., Respondents.

Depositions of William Baird, H. F. Wyman, H. E. Rainey, James Burness and G. W. Wattles, taken before me, G. S. Waring, a Notary Public within and for the County of Douglas, in the State of Nebraska, on the 29th day of October, in the year 1901, at the hour of 10 o'clock A. M., of said day, and the days thereafter as shown herein at Omaha, in said County, in an action pending in the United States Circuit Court for the District of Nebraska, wherein Sumner Wallace is complainant and the American National Bank, et al., are respondents; J. H. Macomber and J. H. McCulloch being present and ap-

pearing for the complainant, and Howard B. Smith, W. W. Morsman, John D. Ware, Chas. Battelle, Paul Charlton and W. H. Defrance being present and appearing for the respondents respectively as set out in the acceptances and affidavits of service of the Notice to take Depositions hereto attached and made a part hereof.

211 William Baird, of lawful age, being by me duly examined, cautioned and solemnly sworn as hereinafter certified, deposeth and sayeth as follows, viz:

Direct Examination

By Mr. Macomber:

Q. You may state your name, age and residence?

A. My name is William Baird; age 53; residence Omaha, Nebraska.

Q. How long have you live in Omaha, Mr. Baird?

A. Fourteen years about.

Q. You may state if you were a director of the American National Bank on the 21st of December, 1895? A. I was.

Q. Do you remember the fact of the contract between the American National Bank and the Union National Bank?

A. I do, yes sir.

Q. How long had you been a director of the American National Bank prior to the 21st day of December, 1895?

A. I think about two years. I became a director, if I remember right, in the early Fall of 1893, early part of the Fall of 1893, and that contract was made I think in the latter part of the Fall, early part of the winter of 1895.

Q. You may state if you took part as a director in the transaction? A. I did.

Q. What committee, if any, of the Board of Directors of the American National Bank did you belong to?

A. I belonged to what I think was designated the Executive Committee of the Board; I believe that was the name consisting of myself, Mr. Levy and Mr. Dufrene, if I re-

212 member right.

Q. What were the particular duties of that committee,

A. The duties of that committee were to inspect the loans and investments which were being made of the funds of the American National Bank from the time of the organization of our Board of Directors and to take general supervision of the business of the bank, as I now remember them.

Q. You may state if you knew the daily transactions of the Bank, as a director and member of this committee?

A. In a general way I did; we met once a week on Saturday, I think, and reviewed the work of the week; that was our custom.

Q. You may state whether or not you knew of the financial condition of the American National Bank on the 21st and a few days or weeks prior, in 1895, as to its ability to meet its coming obligations? A. I did, yes sir.

Q. You may state what condition that was?

It is agreed that all of the objectons made by the defendants are made by each defendant.

The defendants object to the question on the ground that it calls for a conclusion or opinion of the witness.

A. Well, in a general way I would state it was not a very healthy condition, financially speaking.

Q. You may state in a general way if you know, what the obligations were immediately to be met by the American National Bank on or about the 21st day of December, 1895?

A. The deposits of the American National Bank—

Mr. Smith:

Q. Your information came did it not, Mr. Baird, from the examination of reports made to you by the officers of
213 the Bank? A. Yes sir, that is all I knew.

Q. And those reports are a part of the records of the bank, are they not? A. Well, I presume so.

Each of the defendants object to the evidence on the ground that it is not the best evidence.

A. Mr. Baird, I would like to add there, however, that my knowledge of the affairs consisted of the reports which the officers made and the investigation which I made as a member of the Executive Committee of the Board at the time as to the truth of those.

Mr. Macomber: Q. You may go ahead and finish your answer.

A. Answering further the above question, the deposits in the Fall of 1895, shortly prior to the time of the agreement which we have spoken of, consisted in part of accounts held by the City Treasurer, the County Treasurer of Douglas County, and the State Treasurer; as I now remember those accounts were quite large, though at present I am not able to state exactly the amount of any one of them.

Q. Now, you may state if, as a member of the Board of Directors of the American National Bank you had consultations with the other members as to meeting these obligations?

A. I did.

Q. About how many times during the space of a week preceding the 21st of December, did you consult together?

A. Well, I don't remember now; we had various conversations and discussions in reference to it; I don't remember the number of times.

Q. You may state if the directors of the American
214 National Bank arrived at any conclusion as to the necessity for money at that time?

Each of the defendants object to the question as not the best evidence.

A. Yes sir; they did.

Q. Well, you may state what determination the officials and the directors arrived at as to the necessity of borrowing money, in a general way?

Each of the defendants object to the question as not the best evidence, as being vague, uncertain and indefinite.

Q. I don't mean to call for any entry of a record particularly.

Each of the defendants object as not the best evidence, vague, uncertain and indefinite.

A. The officers of the bank and the Board concluded that it would be necessary to make some arrangement to meet the demands that had been made or of which we had received notice would be made on the deposit account by the city and county treasurers, and I think, also the state treasurer.

Q. You may state about how long, the number of days these negotiations leading up to this contract with the Union National Bank occupied?

A. The fact is these negotiations were not conducted by the Board of Directors of the American National Bank, personally directly.

Q. Who was that done by?

A. They were conducted by Mr. William Minot, of Boston, who represented the National Bank Building Company
215 which was the largest stockholder of the American National Bank.

Q. And who else?

A. Myself as his attorney, and the officers of the Union National Bank.

Q. Who was the President of the American National Bank at that time? A. Mr. Kimball.

Q. And who was Cashier?

A. Mr. Wyman, Henry F. Wyman. I should add there that Mr. Kimball was also consulted as President of the Bank, in regard to the negotiations.

Q. You may state, in these consultations, as a director with the other directors and the President and the officials of the Bank, what conclusion you arrived at as to the ability to raise money from the assets of the Bank to meet these [excepted] obligations?

A. Well, we concluded that we could not raise the money, that we could not meet the obligations from the ordinary deposit accounts, that if we did not make some different arrangements from that which then existed we would be compelled to borrow money or liquidate the banks, one or the other.

Q. You may state what conclusion the directors arrived at as to the ability to raise sufficient money from the assets to safely continue the bank?

Each of the respondents object on the ground that it is not the best evidence.

A. The directors, after the two years' experience which we had had in handling the assets of the bank which came down to us from the previous board, had become acquainted with the fact that the securities behind those assets consisted largely of real estate securities, and we had been unable and became convinced that we could not realize on the as-
216 sets which we had in hand without time, and on account of the condition the real estate market was in at that time we did not regard it wise to undertake to force them on the market.

Q. You may state what the fact is as to whether the Board of Directors of the American National Bank got together upon the consideration of this preliminary matter that you have stated that Mr. Minot and yourself and Mr. Kimball participated in about borrowing money for making this contract?

A. I don't remember of any meeting of the board with reference to the question of borrowing money to meet the deposits.

Q. I have reference to the making of the contract?

A. The negotiations leading up to the making of the contract were conducted by Mr. Minot and myself, assisting him as his attorney at the time, and the officers of the Union National Bank, and as soon as we came to a verbal understanding as to the terms of the contract which was then proposed, the president of the American National Bank called a meeting of the Board of Directors of the bank and the whole matter was submitted to the board.

Q. Mr. Baird, I will hand you the contract, marked Exhibit "1" by the reporter, and will ask you first, if that is the contract referred to as having been made? A. It is.

Q. Were you present when that was executed? A. I was.

Q. Did you see it signed? A. I did.

Q. I will ask you regarding the signature there, "The American National Bank of Omaha, by Thomas L. Kimball, President," you may state whose signature that it, who wrote that?

A. Thomas L. Kimball, the President of the American National Bank.

217 Q. And the signature, "Union National Bank, by William W. Marsh, President", you may state whose signature that is, if you know?

A. The signature of William W. Marsh, President of the Union National Bank, signed in my presence.

Q. I will call your attention to the "Attest, Henry F. Wyman, Cas.?" and ask you whose signature that is?

A. The signature of Henry F. Wyman, Cashier of the American National Bank at that time.

Q. And "Attest, Charles E. Ford, Cashier", I will ask you whose signature that is?

A. The signature of Charles E. Ford, who was Cashier of the Union National Bank at that time.

Q. You say you saw the contract executed? A. I did.

Q. Do you know what was done under this contract immediately after its execution, if anything?

A. Yes; I know in a general way what was done.

Q. Well, were you present to know what change took place? A. Yes sir.

Q. You may state the facts about the carrying out of this contract so far as it went, I mean within your personal knowledge?

Each of the defendants object as incompetent, irrelevant, immaterial and not the best evidence, and calling for the conclusion of the witness.

A. The contract was executed by the officers of the two banks about eight o'clock in the evening of the day of its date, and the next morning the Union National Bank, by its officers, took possession of the offices and business of the Ameri-
218 can National Bank and assumed the deposits and paid the deposit accounts of the American National Bank as checks were presented on the same.

The defendant and each of them move to strike out the answer as not responsive.

Mr. Smith: Q. You knew, did you?

A. I presented my own check and had it paid.

Mr. Macomber: Q. You may state whether or not as one of the directors, you took notice of what was being done?

A. I certainly did. And I will add too, that the Union National Bank further proceeded in a general way to carry out the terms of that agreement.

Each of the defendants move to strike out that as a conclusion.

Q. Mr. Baird, I will call your attention to three promissory notes, dated December 23, 1895, for the face amount of $67,000 each, which the reporter has marked Exhibits "2", "3" and "4" and I will ask you to examine those notes and state if you know the fact of their execution? A. I do.

Q. You may state if you were present when they were made? A. I was.

Q. You may examine the signature of these notes which purports to be "The American National Bank by Thomas L. Kimball, President", attested by Henry F. Wyman, Cashier, and state whose genuine signatures they are?

A. The signature of Thomas L. Kimball is the signature of Thomas L. Kimball, President of the American National Bank at that time, and the signature of Henry F. Wyman is the signature of Henry F. Wyman, who was Cashier of the American National Bank at that time.

Q. You may state if you know, Mr. Baird, person-
219 ally what relation these notes bear to this contract which is Exhibit "1"?

A. Yes I do; the relation they sustain to the contract.

Q. Now, you may state why those notes were made by the American National Bank?

A. They were made for the purpose of performing the American National Bank's part of the contract which has already been mentioned, to that extent.

Q. I am calling now, for what you know personally, if you do, what was done as to arriving at the amount for which they should be made?

A. At my request statements were furnished us by the officers of the several banks showing the condition of the accounts and the details with reference to the carrying out of the provisions of this agreement and the balance which was necessary for the American National to provide security for to the Union National consisted of the sum that is embodied in these three notes.

Each of the defendants object to the answer as not responsive and move that it be stricken out.

Q. You may state whether there was any additional amount found to be due the Union National Bank besides these, if you recollect personally, that is, whether there was any Cashier's check or anything of that kind given by Mr. Wyman?

The defendants and each of them object to that as not the best evidence.

A. I can say in a general way that I know there was such but I do not remember, or did not have anything personally to do with it.

Q. Mr. Baird, do you know, or to be more specific,
220 I will call your attention to the provision of this contract making Mr. Kimball a trustee, and ask you who took possession of the assets mentioned in that contract?

Each of the defendants object as calling for the conclusion of the witness.

A. Mr. Kimball took possession of them as trustee under this agreement.

Q. Mr. Baird, my associates have called my attention that perhaps the identification of this signature was not sufficient, I will ask you whose signature—the genuine signature of the American National Bank by Thomas L. Kimball, President, and you may state whose it is, to those notes?

A. It is the signature of Thomas L. Kimball, who signed the name, The American National Bank, by Thomas L. Kimball, the President of that bank.

Q. Mr. Baird, you may state if you were present at a stockholder's meeting of the stockholders of the American National Bank soon after this contract was made?

A. Yes sir, I was.

Q. You may state [was] as to this contract being talked over and discussed in the stockholder's meeting?

Each of the defendants object as not the best evidence.

A. The contract was discussed at that meeting.

Q. You may state as near as you remember what information was furnished by the officers of the bank as to its condition at the time the contract was made, as to the necessity of borrowing money.

Each of the defendants object as incompetent and too general.

221 A. The officers, Mr. Kimball and Mr. Wyman, were both present at that stockholder's meeting, and several of the stockholders, amongst whom, as I now remember, were specially Senator Manderson, inquired of the President and Cashier and directors of the bank who were present why that contract was made and called for a full explanation of the whole situation. Mr. Kimball, in answer to these inquiries gave a full statement of the facts and conditions which controlled the Board of the American National Bank in coming

to the conclusion which it did reach in reference to the contract.

Q. Did he state this orally or in writing?

A. He stated it orally.

Q. You may state what he said?

A. As near as I [and] remember, I cannot now remember the language, I can state the substance of what he said was, that the American National Bank was confronted with notice from the city and county treasurers, and I think the state treasurer, to the effect that by the first of the year or before that time the deposits which were held by those different treasurers would be required and in consequence of that fact the withdrawal of those large deposits would reduce the amount of cash on hand below the lawful requirements, and that the officers and directors of the bank were unable to convert the assets of the bank without a great sacrifice and for that reason they were induced to enter into the contract which was made. Mr. Kimball entered quite fully into details at the time as to the facts and conditions.

Cross-Examination

By Mr. Morsman:

Q. Mr. Baird, you have stated in your examination in chief that the three notes which you have identified, for $67,000 each, were given for the amount for which it was necessary
222 or found necessary the American National Bank should give security to the Union National Bank. Now, did the American National Bank, prior to the making of the contract you have produced and marked Exhibit "1" owe anything to the Union National Bank?

A. No sir; not that I now remember of.

Q. Then these notes were not given to represent any indebtedness that existed prior to the execution of the contract marked Exhibit "1"?

A. No sir; they were given as a part of that contract, as I remember it.

Q. And there was, in fact, no indebtedness at that time from the American National Bank to the Union National Bank?

A. Not that I remember of. There was a controversy between the banks over a matter in court, but I think that was with reference to one of the officers of the American National, wasn't it, I don't remember about that, Captain; there was something in there but it had no reference as I now remember it, to these notes.

Q. Or to any other indebtedness existing at that time from the American National Bank to the Union National Bank?

A. No sir.

Q. They were given simply in the performance of the provisions of the written contract, marked Exhibit "1"?

A. Yes sir.

Q. Well, at the time of the making of that contract marked Exhibit "1", you and all of the officers and stockholders of the American National who had knowledge of the matter, and who co-operated with you in making the agreement, understood that the assets of the American National Bank would much more than liquidate all of its indebtedness, did you not?

A. Yes; on the face of them they certainly would.

223 Q. Now, when you speak of its being necessary to give to the Union National Bank security for that amount represented by these three notes of $67,000 each, what security did you have reference to?

A. Why, I mean that in view of the then existing condition the American National Bank was confronted with cash demands which it was not able to pay, or was about to be confronted with them, when those large deposits would be withdrawn, and in order to avoid the necessity of enforced liquidation, and as we concluded at the time, sacrifice the assets of the American National, we entered into this agreement with the Union National and in order to induce the Union National to assume our then present liabilities and pay our deposit accounts, we made that provision in the agreement that we would appoint Mr. Kimball trustee, and assign to him all the assets of the American National Bank to be held as security for the obligations which would remain due from the American Nation- after the Union National credited the American National with the cash on hand, and with the notes which the Union National was willing to take.

Q. That is, you mean the notes held by the American?

A. Yes sir.

Q. Or other assets held by the American National?

A. Yes, and after the Union National credited the account with the cash on hand, and the notes that they were willing to take as cash, out of the assets of the American National Bank there remained yet due in order to meet all the obligations of the American National Bank a balance represented by those three notes of $200,000, I think it is, if I remember right, and those notes were given to secure that balance.

Q. But the Union National Bank had not at that time paid the deposits, it had only agreed to pay them?

224 A. No, sir; it had only agreed to pay them at the time those notes were executed.

Q. So there was no indebtedness from the American National Bank to the Union National Bank?

A. None, only what was implied in or resulted from that contract, so far as I know.

Q. And is it not true that at that time the Union National Bank expected to liquidate the assets of the American National rapidly enough to meet the demands of the depositors of the American National Bank?

Each of the defendants object to the question as improper cross-examination.

A. It is true that all parties connected with the contract expected at that time to be able to realize on the assets of the American National within the time necessary to meet those notes.

Q. And is it not also true that these notes were given for the purpose of enabling the Union National Bank to carry them into their Bills Receivable Account and show assets offsetting the deposits which it had assumed in behalf of the American National Bank in lieu of the assets of the American National Bank which were not entered on the books of the Union National Bank?

Plaintiff objects as incompetent, immaterial and not proper cross-examination.

A. I am not able to answer that question, except to say that so far as I knew these obligations were given the same as any other obligations for an indebtedness which the Union National assumed for the American National and which, under that contract, the American National expected the Union National to pay, and therefore, gave these obligations to protect the Union National in paying that.

225 Q. The American National expected, and the Union National Bank assumed the obligation to pay the indebtedness of the American National to depositors out of the assets of the American National, did it not?

A. I never so understood it.

Q. You did not so understand it?

A. No sir; I supposed it was a general liability which they had assumed with reference to those.

Q. O yes, the Union National Bank bound itself absolutely to pay the American National Bank's depositors?

A. Yes, but I did not think there was any limit as to how they were paid.

Q. But the expectation of the parties was that the assets of the American National Bank would in fact furnish the funds with which to pay the depositors of the American National Bank?

Complainant objects as asking for the conclusion of the witness, absolutely immaterial, and not proper cross-examination.

A. O, yes, we all expected to realize enough out of the assets to more than pay those notes.

Q. And these notes were not given because of the existence of an obligation or debt at that time for the amount of them or because you anticipated an obligation or debt of that amount?

A. They were not given at the time for any debt which had previously existed from the American National Bank to the Union National Bank but they were given as a means of meeting the obligations which confronted the American National Bank which it was not able to meet at the time without making some terms.

Q. Well, the Union National Bank transferred the deposit accounts of the American National Bank to its own
226 books, did it not?

A. I do not know what the process was there.

Q. You were a depositor of the American National Bank?

A. Yes sir.

Q. And you say you drew your check and got your money?

A. I did; I transferred my account to the Union National, as I now remember it.

Q. That is the way in which the American National paid you?

A. Yes, the Union National paid me by giving me credit on my account with the Union National.

Q. Then you drew your check on the American National?

A. Yes, for whatever balance I had there at the time.

Q. For the mere purpose of transferring your account to the Union National? A. Yes sir.

Q. And the Union National Bank procured the other depositors to do the same thing so far as they did not demand the money, did it not? A. So far as I know yes sir.

Q. And that would necessitate the Union National Bank having some asset to offset the amount of the deposit of the American National that it assumed, in your case, would it not?

A. I presume it would, as a matter of banking business, in order to meet the requirements of the Comptroller of the Currency.

Q. So far as the American National Bank's cash on hand was concerned, and its Bills Receivable which the Union National accepted as cash, the Union National carried that right into its own assets?

227 A. That was my understanding, yes sir.

Q. And the amount of the American National Bank's indebtedness to depositors which was assumed by the Union National Bank and for which the Union National, did not get money or other assets of the American National Bank would

be a liability on the part of the Union National Bank for which they would have to have some form of assets? A. Yes sir.

Q. Now, is it not true that these three notes were executed for the purpose of giving them assets to offset that liability in view of the fact that the other assets of the American National Bank which the Union National Bank did not take absolutely passed nominally, at least, into the hands of Thomas L. Kimball, Trustee?

Complainant objects as incompetent, immaterial and not proper cross-examination.

A. It is true that those notes were given to the Union National Bank for the purpose of offsetting the liability which the Union National Bank assumed in the payment of the deposits of the American National to the extent of those notes.

Q. Now, you spoke a moment ago that the amount of those notes was the amount which it was found necessary that the American National Bank should give the Union National Bank security for; now you may explain what the security was that you had in contemplation when you spoke of that; that is, I want to know what the property was in a general way?

A. The security which the American National Bank agreed to give under the terms of that contract consisted of an Assignment to Thomas L. Kimball as Trustee for the use of the Union National Bank of all the properties and assets remaining belonging to the American National Bank, to be held and applied so far as necessary upon the liquidation of those notes, first, and then distributed after the notes were paid,
228 amongst the stockholders of the American National if anything remained.

Q. Now, then that security consisted of all the remaining assets of the American National Bank, after the Union National had taken out its cash items and such bills receivable as it was willing to accept as cash? A. Yes sir.

Q. And it consisted of promissory notes, mortgages and notes and some real estate, and the office furniture of the Bank of the American National Bank?

A. Yes, everything it had.

Q. What was done with those assets, that is, I mean what physical disposition or removal of them was made?

A. They were taken into the custody of Mr. Kimball by himself as Trustee, and controlled and collected and handled by him as long as he lived.

Q. They were, at the time the American National Bank had the custody and possession of them, at the corner of Fifteenth and Dodge Streets, were they not?

A. Prior to the execution of the agreement in question, yes sir, they were in the custody of the American National Bank at that location.

Q. To what place were they removed, if they were removed at all?

A. They were not in fact removed from that location; Mr. Kimball retained his office in the same location that he had been previous to that time.

Q. Well, where had the Union National Bank had its office prior to the making of this agreement, marked Exhibit "1"? A. At the corner of Sixteenth and Dodge.

Q. Then did the Union National Bank move into the offices of the American National Bank?

A. Yes sir; the next morning after the execution of this contract, or I don't know, may be that night, they were
229 there the next morning when I went down.

Q. And the assets of the American National Bank were not moved or disturbed at all?

A. Only to the extent of being placed in Mr. Kimball's custody and by him kept in some place in the bank there, I don't know just where he kept them.

Q. Well, he had been President of the American National Bank? A. Yes sir.

Q. And had a desk in the office of the American National?

A. Yes sir.

Q. And retained that desk after the Union National occupied those offices? A. Yes sir.

Q. And the Union National Bank continued to occupy the same vault the American National Bank had?

A. Yes, they continued the use of the vault.

Q. They used all the furniture and desks the American National had previously used and occupied?

A. Yes, they belonged to them then; they were a part of the subject matter of the contract.

Q. [Anf] the assets of the American National Bank were not removed from the room or vault where they had previously been kept?

A. They were not removed from the vault as I understood it; now, I don't know personally.

Q. I only want your personal knowledge.

A. I don't know what was done with them personally, because that was no part of my connection with the business; I can state that I know what was understood and di-
230 rected by the directors and the talk in the meeting of the Board in reference to the keeping of those assets.

Q. Mr. Kimball was also a director, was he not, of the Union National Bank, or immediately elected a director?

A. I think so, after this arrangement was completed I think he was elected a director of the Union National Bank.

Q. Had he previously been a stockholder or director if the Union National Bank? A. No sir.

Q. He became a stockholder at that time, did he not?

A. I presume so, although I do not know personally anything about that.

Q. What was his principal business?

A. Well, I don't think he had any special business excepting taking care of his own estate which was considerable, as I understood it, and was President of the American National Bank, so far as I know.

Q. As President of the American National he was not active in the management of the business, was he?

A. Yes sir.

Q. Was he? A. Yes sir.

Q. Spent his time in the office of the bank?

A. Yes sir; he was always present when I was there.

Q. Well, Minot of whom you have spoken, was the owner, or largely the owner of the building in which the American National Bank had its office, was he not?

A. I do not know how much of the stock of the Bank Building Company he had; I think he had some of it, but I don't know how much; I don't think he had a large amount of it.

Q. He was also a large depositor in the American National Bank? A. Yes sir; he had been.

231 Q. Over $50,000 at the time this agreement was made?

A. I don't recollect as to the amount then; he had been a large depositor.

Q. You do not know now that he had at the time the agreement was made over $50,000 in the American National?

A. No sir; I do not remember.

Q. Mr. Kimball was also a large depositor in the American National, was he not? A. Yes sir.

Q. And Dufrene was a large depositor? A. Yes sir.

A. And Dufrene also became a director of the Union National Bank immediately did he not?

A. I am not sure about that; I do not remember.

Q. And you yourself was a depositor in the American National Bank, you stated? A. Yes sir, a small one.

Q. Can you state what amount?

A. It would not run only my current account; it would run a hundred dollars or a couple of hundred; that would be the average size of it; it was not large at any time.

Q. Do you know the amount of Mr. Kimball's deposit?

A. No sir; I do not know.

Q. Well, Minot was not a director of the American National? A. No sir; I don't think so—wait—

Q. Was he a stockholder, of the American National?

A. No sir; I do not think he was; I would not be right sure whether he held any stock at that time or not.

Q. Can you explain how he came to be figuring with you and you representing him as an attorney and procuring this agreement to be made? A. Yes sir.

232 Q. You may do that?

A. The reason why that was so was because Mr. Minot as Trustee and investor of funds of various clients of his had invested funds in the National Bank Building Company, and the National Bank Building Company was the holder of, I think it was $65,000 or a large amount of the American National Bank stock.

Q. $75,000?

A. $65,000 I think it was; and Mr. Minot felt under obligations, as the representative of his clientage to take care of their interests as far as he could, and I was his attorney with reference not only to that but all other matters he had here in the city, which consisted of a good many different things, and he had been a friend of the American National Bank and sustained it by trusting deposits with it, and for that reason he was interested as the representative of those various interests, in having the arrangement made which was made, not because of any personal interest that he had, so far as I know, except as stated.

Q. You cannot give us the amount of the city or county or state treasurer's deposit with the American National Bank?

A. No, I do not remember now, Captain.

Q. You say you had notice from the city and county treasurer that they would demand the payment of the deposit soon?

A. Yes; the treasurers had notified the President Mr. Kimball, and he told us.

Q. Was it in writing?

A. I do not know whether it was or not; I almost think the county Treasurer did write a letter, but I am not sure.

Q. Well, the American National had some cash on hand at the time of the making of this agreement, did it not?

233 A. Yes sir.

Q. Do you know how much?

A. I do; it was sixty odd thousand, but I am speaking only from memory now.

Q. Do you think that included the cash items such as its deposits with reserve agents and correspondents?

A. Yes I think so.

Q. And all checks and drafts? A. Yes; I think so.

Q. $65,000, you think?

Q. About that; somewhere in that neighborhood; I am not positive as to the exact amount but it was in that neighborhood.

Q. And it never had or had not at that time failed to pay all demands made upon it?

A. No sir; not from the time our board of directors took charge of it.

Q. That was after the reorganization? A. Yes sir.

Q. That was something like a year prior to this?

A. Something like two years, I think.

Q. Who drew this agreement marked Exhibit No. 1, Mr. Baird? A. I did.

Q. Now, after it was drawn it was then submitted to the directors of the American National Bank? A. Yes, sir.

Q. And do you remember who of the directors were present?

A. I think the whole Board was present at the time; I am not absolutely sure as to that but I think so.

Q. At whose instance did you draw the agreement?

234 A. Well I might say I drew the agreement at the instance of both parties, that is, I did the legal work of drafting the agreement, after they had come together on terms and after we had agreed upon the details.

Q. When you say both parties, do you mean yourself and Mr. Minot and Mr. Kimball on one side, and on the other side Mr. Ford and Mr. Marsh?

A. Mr. Ford and Mr. Wattles were representing the Union National.

Q. That is what you mean? A. Yes sir.

Q. And how long after it was drawn was it before there was a meeting of the Board of Directors of the American National Bank?

A. It was the evening of the same afternoon; the negotiations had been pending for some days, I don't remember exactly how long, and we arrived at a conclusion of the negotiations in the afternoon of the day of the date of that agreement, and immediately upon its being drafted the directors were called together and we held a meeting and considered it and adopted it and ratified it.

Redirect Examination

By Mr. Macomber:

Q. Mr. Baird do you remember about how much actual cash there was on hand that was turned over?

A. As I stated in answer to Mr. Morsman, I think it was about $65,000.

Q. That would include cash items?

A. Yes, including sight drafts.

Q. Do you know how much actual money was on hand in the American National Bank?

A. No; I do not, but that amounted to the same thing as money; I do not recollect now.

235 Q. Now, in giving these notes, these notes were made two or three days after the Union National had taken the deposit accounts to pay off?

A. Well, I do not think it was so long as that; I think they entered at once on the investigation of the acc-unts, I mean the Bills Receivable of the American National Bank, which the officers of the Union National agreed to accept, and as the cash items was easily determined, and as soon as they arrived at those Bills Receivable which they were willing to take and the value of the furniture and so on, which were cash items, it was an easy matter to determine what there was back, and it was only a matter of figuring—I do not remember when those notes were executed, but it was shortly after the execution of the original contract.

WM. BAIRD.

Thereupon a recess was taken until 2 o'clock P. M. of said day.

Filed Dec. 30, 1901. Geo. H. Thummel, Clerk.

236 Omaha, October 29, 1901, 2 P. M.

The same parties being present as this morning, the taking of depositions under the annexed notice is resumed as follows:

Henry F. Wyman of lawful age, being by me first duly examined, cautioned and solemnly sworn, as hereinafter certified, deposeth and sayeth as follows, to-wit:

Direct Examination.

By Mr. McCulloch:

Q. State your name; age and place of residence?

A. Henry F. Wyman; age 36, residence, Omaha, Nebraska.

Q. How long have you lived in Omaha, Mr. Wyman?

A. Very nearly 12 years.

Q. You may state in what business you were engaged in in Omaha during the year 1895 and prior thereto?

A. In the banking business.

Q. With what bank were you connected?

A. The American National Bank.

Q. In what capacity? A. Cashier.

Q. How long were you Cashier of that bank?

A. From April, 1890 until the present time, if the organization were still in existence.

Q. You may state, Mr. Wyman, whether as such Cashier you were acquainted with the stockholders of the bank, who they were? A. Yes sir, I am.

Q. What record, if any, did the bank keep as to the stockholders?

A. We kept a book in which the names and amount of stock were registered.

237 Q. Showing you a book, I will ask you what it is, if you will examine it?

A. This is the stock record of the American National Bank?

Q. From an examination of that book will you be able to state who the stockholders of the American National Bank were at the time that the bank went into voluntary liquidation?

A. Yes sir.

Q. You may state, Mr. Wyman, whether or not Thomas H. McCague was a stockholder at that time and the amount of shares of stock he held? A. Ten shares.

Q. You may state whether or not Alex. G. Charlton was a stockholder and the amount of shares he held?

A. Nine shares.

Q. Can you without having the names and questions repeated, give us from that book who the stockholders were and the amount of stock they held at that time?

A. I think I can.

Q. State who they were and the amount of stock they held?

A. Elmer C. Brownlee, 10 shares; A. R. Dufrene, 75 shares; Edgar M. Morsman, 75 shares; Philip Merger, 7½ shares; George G. Wallace, 75 shares; Wm. S. Poppleton, 56¼ shares; John S. King, 2 shares; William Wallace, of Warren, Ohio, 20 shares; Chas. F. Manderson, 10 shares; Anna C. Crowell, 9 3-4 shares; Chas. C. George, 15 shares; R. H. McClellan, 50 shares; Peter Frenzer, 15 shares; John N. Frenzer, 5 shares; Chas. H. Walworth, 22½ shares; Frank W. Wessells, 3 3-4 shares; Frank Graham 3 3-4 shares; James H. McCulloch, 25 shares; John P. Charlton, 7½ shares; C. W. Morton, 6 shares; Royal Wilson, 10 shares; Jacob Wead, 7½ shares; J. J. Brown, Jr., 5 shares; Jas.

I. Woodard, 2-3 shares; Viola Coffin, 7½ shares; Howard

238 B. Smith, 50 shares; Edward G. Glenn, 5 shares; Emily J. Robinson, 1½ shares; James H. Morton, 2 shares; George Morton, 1 share; Mary E. Morton, 1 share; William Wilson, 11¼ shares; H. F. Wyman, 58¼ shares; A. U. Wyman, 10 shares; F. R. McConnell, as trustee, 5 shares; John Speer, 10 shares; J. E. Patrick, 15 shares; R. L. Brownlee, 25 shares; Miss Caroline Carpenter, 18 shares; W. C. Beer, 6 shares; M. C. Acheson, 15 shares; George Marples, 10 shares; Arthur H. Flack, 5 shares; Meade C. Williams, 11¼ shares; James H. Conrad, 10 shares; T. R. Neal, 10 shares; J. H. Hawkins, 25 shares; Wm. Baird, 10 shares; Manufacturers National Bank of Boston, 25 shares; John L. McCague, 287 shares; Morris Levy 50 shares; National Bank Building Company of America, 615 shares; McCague Bros., 50 shares; Refus R. Bullock, 22½ shares; Alex. G. Charlton, Sec'y, 10 shares; Samuel Blackwell, 50 shares.

Q. You may state, Mr. Wyman, if you know who was the real owner of the 20 shares which stood in Alex. G. Charlton's name as Secretary? A. I never knew.

Q. As Cashier of the American National Bank, Mr. Wyman, did you have charge of and keep the records of the Bank and of the meetings of the directors and stockholders?

A. I did, yes sir.

Q. Calling your attention to a book which I will have the reporter mark as Exhibit "5" for identification, I will ask you to state what that book is?

A. This is the record book of the bank in which the minutes of the meetings of the stockholders and directors are recorded.

Q. And you may state who had charge of the keeping and the making of that record? A. I made the record.

Q. Calling your attention to page 245, of that re-
239 cord, you may state, beginning in the middle of the page with the words "Regular Directors Meeting", you may state what it is a record of?

A. It is a record of the regular directors' meeting held December 16, 1895.

Q. And what pages are covered by the record of that meeting? A. Part of page 245 and all of page 246.

Q. Calling your attention to the signature of Thomas L. Kimball, Prs., and Henry F. Wyman, Cas., as found on the middle of page 246 and also found at the bottom of page 246, you may state if you know whose signatures those are?

A. One is the signature of Mr. Thomas L. Kimball, the President of the American National Bank and the other is my signature as cashier of the bank.

Complainant now offers in evidence pages 245, commencing with the regular directors meeting about the middle of the page, and page 246, of the record which has just been identified as Exhibit 5, which the reporter may mark as Exhibit 6. (A copy of Exhibit 6 is found on page 218 hereof.)

Q. Calling your attention to page 248 of the book that has been marked Exhibit "5", you may state what record you find there, commencing with about the middle of the page?

A. Special Director's Meeting, December 21, 1895.

Q. Now, you may state what pages of the book Exhibit "5" the record of that meeting covers?

A. It covers part of page 248, all of pages 249, 250 and part of page 251.

Complainant now offers in evidence the record of the Directors' Meeting held December 21, 1895 as found on pages
240 248, 249, 240 and 251, in the book which has been identi-

fied as Exhibit "5", and ask the reporter to mark the same as Exhibit "7". (A copy of Exhibit "7" is found on page 221 hereof.)

Q. You may state, Mr. Wyman, whose signatures are signed to the record of that meeting just offered in evidence?

A. Thomas L. Kimball President, and Henry F. Wyman, Cashier.

Q. Those are the signatures of yourself and Mr. Kimball?

A. Yes sir.

Q. Calling your attention to another record in the same book, marked Exhibit "5", and commencing about the middle of page 251, and ending on that page, I will ask you what record that is?

A. It is a record of the Regular Directors' Meeting held January 14, 1896.

Q. And that record was kept also under your supervision?

A. It was, yes sir.

Q. And whose signatures are attached thereto?

A. Mr. Thomas L. Kimball, the President and myself, as Cashier.

Complainant offers in evidence the record as found on page 251 of the book marked Exhibit "5", of the Regular Directors' Meeting held January 14, 1896, and asks the reporter to mark it as Exhibit "8". (A copy of Exhibit "8" is found on page 226 hereof.)

Q. Calling your attention to the same Book, Exhibit "5", at page 252, I will ask you what record commences at the top of that page?

A. The record of the Annual Stockholders' Meeting,
241 held January 14, 1896.

Q. And what pages does that record cover?

A. All of pages 252, 253, 254 and part of page 255.

Q. Ending with what signatures, and in whose handwriting are they?

A. The signatures of Mr. Thomas L. Kimball, Chairman, Henry F. Wyman, Cashier and Secretary.

Complainant offers in evidence the record of the stockholders' Meeting held January 14, 1896, commencing on page 252 of the book marked Exhibit "5", and ending on page 255, with the signatures of the Chairman and Cashier and Secretary, and asks the reporter to mark it Exhibit "9". (A copy of Exhibit "9" is found on page hereof.)

Q. Calling your attention to another record which commences near the bottom of page 255 of the book marked Exhibit "5", you may state what record that is?

A. A record of Special Directors' Meeting held January 17, 1896.

Q. And it covers what pages?

A. Part of page 255 and all of page 256.

Q. And that record is signed by whom?

A. Thomas L. Kimball, President and Henry F. Wyman Cashier.

Complainant offers in evidence the record of the Directors. Meeting held January 17, 1896, commencing near the bottom of page 255 and ending at the bottom of page 256, as found in book marked "5", and asks the reporter to mark the same as Exhibit "10."

242 "A copy of Exhibit "10" is found on page 232 hereof.)

Q. Calling your attention to page 257 of this record book marked Exhibit "5", you may state what record is found on that page and [that] it is?

A. There is one of the printed circular letters addressed to the shareholders of the bank under date of January 17, 1896.

Q. And what was done with that circular letter and what was the occasion of its being issued?

A. Copies of the letter were sent to all stockholders.

Q. By whom, Mr. Wyman, was that circular letter mailed, if you know?

A. My recollection is that I mailed those letters but I am not positive of that.

Q. And under whose supervision was it done?

A. Under my supervision.

Q. According to the certificate that is on the circular letter that is found on that page? A. Yes sir.

Complainant offers in evidence the circular letter found on page 257, together with the certificate of the Cashier as to its being mailed and which the reporter will mark as Exhibit "11". (A copy of Exhibit 11 is found on page 234 hereof.)

Q. Calling your attention to page 258 of the record book identified as Exhibit "5", you may state what record is contained on that page?

A. It contains the record of the judges of election.

243 Q. Judges of what election, what meeting?

A. At the meeting of the stockholders of the American National Bank held January 14, 1896.

Q. This record was made under your supervision, that is the record of the report? A. It was, yes sir.

Complainant offers in evidence page 258 of the Book marked Exhibit "5", and will have the reporter mark it as Exhibit "12". (A copy of Exhibit "12" is found on page 236 hereof.)

Q. Calling your attention to the top of page 259 and ending about the middle of the page, with the signatures of the President and Cashier, you may state what record that is?

A. It is a record of the Special Directors' Meeting held February 25, 1896.

Complainant offers in evidence that part of page 259 containing a record of the Special Directors' Meeting described by the witness, and asks the reporter to mark it as Exhibit "13". (A copy of Exhibit "13" is found on page 237 hereof).

Q. Calling your attention to the record book marked Exhibit "5", beginning about the middle of page 259, with the words, "Special Stockholders' Meeting", you may state what record that is and what pages it covers?

A. That is a record of the Special Stockholders' Meeting held February 25, 1896, and it covers part of page 259, all of page 260 and part of page 261.

Q. Ending with what words?

A. Thomas L. Kimball, Chairman, Herry F. Wyman, Sec'y.

Complainant offers in evidence the record of the Special Stockholders' Meeting held February 25, 1896, as found on
244 pages 259, 260 and part of 261, in Record Book, Exhibit "5", and asks the reporter to mark this offer as Exhibit "14". (A copy of Exhibit "14" is found on page 238 hereof.)

Q. Calling your attention to what is marked as "Copy of Teller's Report", found on page 261, you may state what that refers to, page 261 of Exhibit "5"?

A. That refers to the result of the vote on the resolution to place the bank in voluntary liquidation that was cast on February 25, 1896, at the meeting of the shareholders.

Complainant offers that report in evidence as found on pages 261 and 262 of the record book marked Exhibit "5", and asks the reporter to mark it Exhibit "15." (A copy of Exhibit "15" is found on page 241 hereof).

Q. Calling your attention to the record as found commencing about the middle of page 262 and ending at the bottom of page 263, you may state what that is?

A. It is a record of the Special Directors' Meeting held February 27, 1896.

Complainant offers in evidence the record of the Special Directors' Meeting as found on pages 262 and 263 of the Record Book marked Exhibit "5", and asks the reporter to mark this offer as Exhibit "16". (A copy of Exhibit "16" is found on page 245 hereof).

Q. Calling your attention to the record which has just been offered in evidence and to the certificate mentioned therein, and to which you were directed to affix your name, being the certificate to the Comptroller of the Currency, you may state whether or not you carried out the instructions of the
245 Board of Directors in that regard and forwarded that certificate.

Each of the respondents object as not the best evidence and asking for the conclusion of the witness.

A. I presume I did.

Q. Well, what is your best recollection of it?

A. My recollection is that such certificate was forwarded to the Comptroller, that would be my recollection of it.

Q. And now with reference to the other notice which is in the same record which seems to be directed to the creditors of the American National Bank, did you also forward that notice?

Each of the respondents object as not the best evidence and calling for the conclusions of the witness.

A. I presume so; I do not know whether that notice was one to be sent to the Comptroller or not; that notice may have been a part of the certificate for voluntary liquidation.

Q. Now then, the certificate for voluntary liquidation which seems to be copied in this record, you may state whether or not that was a printed certificate which was forwarded from you to the Comptroller's office, if you know?

A. That is my recollection.

Q. You may state whether or not you carried out the instructions with reference to that matter?

Each of the respondents object as not the best evidence and asking for the conclusion of the witness.

A. My recollection is the instructions were carried out.

Q. Calling your attention to the Comptroller of Currency at that time, at the time the American National Bank
246 went into voluntary liquidation, you may state whether or not you know who was the Comptroller at that time?

A. Yes sir, I do.

Q. Who? A. Mr. James H. Eckles.

Q. Do you know Mr. Eckles' signature? A. I do.

Q. Calling your attention to the letter found on page 265 of this record marked Exhibit "5", you may state whose signature that is attached to that letter?

A. The signature of Mr. James H. Eckles, Comptroller of the Currency.

Q. Who received that letter, if you know? A. I did.

Q. And did you, as Cashier, make it a part of the record of the American National Bank as it is attached there?

A. I did, yes sir.

Q. You may state if you know whether or not that was in response to any letter which you had written? A. It was.

Q. Did you keep a copy of the letter that you wrote?

A. I did.

Q. Calling your attention to a letter which is found on page 264 of this record book marked Exhibit "5", you may state what that is?

A. It is a letter to the Comptroller of the Currency from myself as Cashier.

Complainant now offers in evidence the copy of the letter found on page 264 of the record book marked Exhibit "5", and asks the reporter to mark it as Exhibit "17". (A copy of Exhibit "17" is found on page 245 hereof.)

Complainant also offers in evidence the letter identified by the witness as found on page 265 of the record book
247 marked Exhibit "5" and signed James H. Eckles, Comptroller, and asks the reporter to mark it as Exhibit "18". (A copy of Exhibit "18" is found on page 246 hereof.)

Q. What steps Mr. Wyman, if any, did you take toward giving the notice as to the liquidation of the bank and to its publication?

A. I caused to be published in the Omaha Mercury a notice to that effect?

Q. Did you receive a proof of publication?

A. I did, yes sir.

Q. In the Omaha Mercury? A. Yes sir.

Q. Have you a record of that proof? A. Yes sir.

Q. Where is it found?

A. On page 270 of the record book.

Complainant offers in evidence the proof of publication in the Omaha Mercury of the notice attached to the proof as found attached to page 270 of the record book marked Exhibit "5", and asks the reporter to mark it Exhibit "19". (A copy of Exhibit 19 is found on page 247 hereof.)

Q. You may state, Mr. Wyman, whether you made publication in any other paper besides the Omaha Mercury, and if so, what?

A. The notice was also published in the American Banker.

Q. What paper is the "American Banker", and where is it published?

A. It is a weekly financial publication in New York
248 City.

Q. Did you receive proof of publication of such notice? A. I did.

Q. And did you make any record of it in your record book?

A. I did

Q. And on what page is it found?

A. Page 272, of the record book Exhibit "5".

Complainant offers in evidence the proof of publication of the "American Banker" as found attached to page 272 of the record marked Exhibit "8", and asks the reporter to mark such proof of publication as Exhibit "20". (A copy of Exhibit "20" is found on page 249 hereof.)

Q. Calling your attention to a letter found on page 274 you may state if you know the signature of that letter, and whose it is?

A. It is the signature of Mr. James H. Eckles, Comptroller of the Currency.

Complainant offers in evidence the letter found on page 274 of Exhibit "5" and asks the Reporter to mark it as Exhibit "21". (A copy of Exhibit "21" is found on page 250 hereof).

Q. Calling your attention to page 268 of this record book, marked Exhibit "5", you may state what that letter is?

A. It is a letter from the Assistant treasurer of the United States.

Q. To what does it pertain?

A. It refers to the deposit of lawful money of the United States for the redemption of circulation.

Q. Was that letter received in the regular course of business with reference to the liquidation of the bank?

Yes sir.

249 Complainant offers in evidence the letter found on page 268 of Record Book Exhibit "5" and asks the reporter to mark it as Exhibit "22". (A copy of Exhibit "22" is found on page 251 hereof).

Q. Mr. Wyman, I wish you would turn in this record book, Exhibit "5", to the stockholders' meeting in January 1895.

A. Yes sir. (witness turns to record).

Q. On what pages is it found?

A. It is found on part of page 215, all of page 216 and part of page 217.

Complainant offers in evidence the record of the Annual Stockholders' Meeting as found in Record Book Exhibit "5",

commencing at the middle of page 215 and ending at the middle of page 217, and asks the [reported] to mark it Exhibit "23". Copy on page 252.

Q. Calling your attention now again to the record of the Directors Meeting Held December 21, 1895, and which has been introduced in evidence as Exhibit "7", you may state what, if anything, was done toward the signing of the contract embodied in that letter, was there a contract signed?

A. There was, yes sir.

Q. Calling your attention to a paper which has been marked as Exhibit "1", in this case, you may state whether or not that is the contract to which you refer?

A. That is the contract, yes sir.

Q. You may state in whose handwriting is the signature, "The American National Bank of Omaha, by Thomas L. Kimball, President"?

250 A. It is in the handwriting of Mr. Thomas L. Kimball.

Q. Are you acquainted with the handwriting of the signature for the Union National Bank? A. Yes sir.

Q. And in whose handwriting is that?

A. Mr. William W. Marsh.

Q. You may state whether or not you know that Mr. Kimball was President and Mr. Marsh was President of the respective banks at that time? A. Yes sir, I do.

Q. You may state if you know whose signature and handwriting the words "Attest, Henry F. Wyman, Cas." are in, to this paper, Exhibit "1"?

A. They are in my handwriting.

Q. Mr. Wyman, you may state, also, if you know, in whose handwriting the subsequent words, Attest, Charles E. Ford, Cashier, are? A. Mr. Charles E. Ford.

Q. Was he cashier of the Union National Bank at that time?

A. He was.

Q. And you were cashier of the American National Bank?

A. Yes sir.

Q. Mr. Wyman, in this contract are found these words: "And to this end the party of the first part agrees to execute and deliver to the party of the second part its three promissory notes of equal sums for the amount of liabilities which the party of the second part may assume after crediting the full amount of cash on hand and bills receivable, and other assets which may be accepted by the party of the second part on examination, which notes shall draw interest from date at the rate of six per cent per annum, payable quarter-annually and be payable in one, two and three years from date, re-

251 spectively, and shall be non-negotiable". You may state whether you had anything to do with the closing up

of the matters of the American National Bank under this contract? A. I did, yes sir.

Q. Did that result in the giving of notes as described in that? A. It did, yes sir.

Q. Calling your attention to three notes which have been identified as Exhibits "2", "3" and "4", you may state whether those are the notes which were given in compliance with that contract? A. They are, yes sir.

Q. You may state by whom those notes are signed, if you know?

A. They are signed by the American National Bank, by Thomas L. Kimball, President, attested by Henry F. Wyman, Cashier.

Q. Each of them? A. Each note, yes sir.

Q. Calling your attention to page 278 in this record book marked Exhibit "5", and commencing about the middle of the page, you may state what that is a record of?

A. It is a record of the regular stockholder's Meeting of January 12, 1897.

Q. State whether or not at that meeting a report was submitted to the stockholders and if it is embodied in the record of that meeting? A. It is, yes sir.

Q. And by whom is it signed.

A. Thomas L. Kimball, Trustee, Henry F. Wyman, Cashier.

Complainant offers in evidence the record of the stockholders' meeting of January 12, 1897, commencing about
252 the middle of page 278 and ending on Page 282, and asks the reporter to mark it Exhibit "24". Copy on page 255.

Each of the defendants object to the introduction of Exhibit "24" as irrelevant and incompetent.

Q. Calling your attention to this record which has just been offered in evidence, Exhibit "24", and particularly to the report embodied in it as found on page 279, you may state what that report is, it is a comparative statement between what dates?

A. It is a comparative statement of the bank between December 21, 1895 and January 1, 1897.

Q. Calling your attention to the item in that report under the heading of December 21, 1895, and of Deposits, $239,947.69, you may state what had become of those deposits, they not appearing in your opposite side, of January 1, 1897?

A. They had apparently been paid.

Q. Well, are you able to state in what way they were paid, are those the deposits which were assumed by the Union National Bank? A. Yes sir.

Q. So when you say they were paid, you mean they were paid by the consummation of the contract which has been referred to? A. Yes sir.

Q. Calling your attention to the Bills Payable, $50,000 under date of December 21, 1895 and to the Bills Payable of $184,000, under date of January 1, 1897, you may state how that difference was made up, if you know?

A. The $184,000 represented the notes given by the
253 American National Bank to the Union National Bank, the $50,000 under date of December 21, 1895, having been disposed of, paid.

Q. And by whom was that paid?

A. By the Union National Bank.

Q. Now, when you say the $184,000 represents the notes given, do you refer to these three notes which have been shown to you as Exhibits "2", "3" and "4"?

A. Yes; I refer to that amount which was at that time unpaid on those notes.

Q. Calling your attention to this report as found on page 279 of this Exhibit "24", to the item of Bills Rediscounted, $4,880.64, as found under date of December 21, 1895, and seems to disappear under date of January 1, 1897, you may state what became of that item, and what it is?

A. The payment of that item was assumed by the Union National Bank and disappeared from our statement.

Q. And the item of overdraft with the Union National Bank, $99,85, did the American National Bank keep an account with the Union National Bank at that time?

A. I don't know whether it was the account of the American National with the Union National or Mr. Kimball's account with the Union National.

Q. As trustee?

A. As trustee; I don't recall the character of the account.

Q. Now, Mr. Wyman, you may state what was done between the officers of the American National Bank and the Union National Bank after the signing of this agreement and which resulted in the giving of these three notes, marked Exhibits "2", "3" and "4"?

A. The Union National Bank took possession of the
254 assets and property of the American National Bank, all of which were surrendered by the officers of the American National Bank to the Union National Bank.

Q. Well, you misunderstand my question I think. What method was pursued which resulted in the giving of those three notes, Exhibit "2", "3" and "4"?

A. I do not believe I know just what you are getting at.

Q. How do you arrive at these amounts?

A. We aggregated the indebtedness of the American National Bank and deducted from that the amount of cash and notes that the Union National took into its—the amount of cash

it took into its cash and the amount of notes it took on to its Bills Receivable, the notes it assumed as a part of its own notes.

Q. When you say any notes it assumed as part of its own notes, do you mean notes which were then held by the American National Bank and which the Union National Bank was willing to take at their face. A. Yes sir.

Q. So they took certain notes of the American National just the same as they took cash? A. Yes sir.

Q. And then the $201,000 was arrived at by taking the difference between the amount of cash and cash securities which the Union National took and the liabilities which it assumed, is that right? A. That is right.

Q. Now then, did you continue in the employ of the American National Bank after these notes were given?

A. No; I continued with Mr. Kimball—I continued in the employment of Mr. Kimball to take care of the matters
255 for him.

Q. But did you continue, and were not you elected susequently as cashier of the bank? A. I think so, yes sir.

Q. Well, did you continue as cashier of the American National Bank? A. Yes sir.

Q. You say that you were in the employment, that is you were working with him, Mr. Kimball?

A. Under him, under his directions.

Q. In doing what.

A. In looking after the collections and taking charge of any matters in relation to the old American.

Q. The collection of the old assets of the American National? A. Yes sir.

Q. Now, as these assets would be collected, Mr. Wyman, you may state what would be done with the money?

A. The assets as collected were deposited in the Union under this account, that I don't know whether it was kept in the name of the American or Mr. Kimball, I cannot recall that, and paid out of his checks for various purposes, and some applications were made on those notes.

Q. That is net amounts, whenever you had an amount which was sufficient to apply on the note you wou l make a payment on the note, is that it? A. Yes, that was true.

Q. You may state, Mr. Wyman, how long you continued with Mr. Kimball or under Mr. Kimball in the work of collecting these assets?

A. Until April 1, 1897, I think it was; it was March or April, 1897.

256 Q. Was there any one else assisting you and Mr. Kimball in their collection?

A. Not at that time.

Q. And after that time, was there anyone assisted Mr. Kimball do you know? A. Yes sir.

Q. Do you know who it was? A. Mr. James Burness.

Q. Did he go in at the time you ceased work?

A. About that time.

Q. Calling your attention to a paper which I will have the reporter mark as Exhibit "25", I will ask you if you ever saw that paper before? A. Yes sir.

Q. Did you see any of the parties place their signature on the paper?

A. I placed my own there; I don't know about the others.

Q. Calling your attention to the first signature, you may state if you know in whose handwriting that is, that is, if you know the handwriting? A. Yes sir.

Q. Whose is it? A. Mr. John C. Wharton.

Q. That is, you mean the name John C. Wharton, or the balance of the signature, National Bank Building Co.?

A. National Bank Building Co., of America by John C. Wharton, Attorney in fact.

Q. You may state if you know whose handwriting the next signature is? A. Mr. Thomas L. Kimball.

257 Q. You know his signature? A. Yes sir.

Q. You may state whether or not you know the handwriting of the next signature? A. Yes sir.

Q. And whose is it? A. Mr. William Baird's.

Q. You may state whether or not you know the handwriting of the next signature? A. Yes sir.

Q. And whose is it? A. Mr. E. C. Brownlee.

Q. You may state whether or not you know the handwriting of the next signature? A. Yes sir.

Q. Whose is it? A. Mr. Alfred R. Dufrene.

Q. You may state whether or not you know the handwriting of the next signature? A. Yes sir.

Q. Whose is it?

A. The signature is Anna C. Crowell by Thomas H. McCague, attorney in fact.

Q. By whom was it written, if you know?

A. Thomas H. McCague.

Q. You may state whether or not you know the handwriting of the next signature? A. Yes sir.

Q. Whose is it? A. Mr. Thomas H. McCague.

Q. Do you know the handwriting of the next signa-

258 ture? A. Yes sir.

Q. Whose is it?

A. It is the signature of McCague Brothers.

Q. Do you know who wrote it?

A. Thomas H. McCague wrote it.

Q. Do you know whether or not he was a member of the firm of McCague Bros.?
A. That was my information, yes sir.
Q. Do you know the handwriting of the next signature?
A. Yes sir.
Q. Whose is it? A. Mr. John L. McCague.
Q. Do you know the handwriting of the next signature?
A. Yes sir; that is, I know the attorney in fact.
Q. Who wrote it?
A. William L. McCague, by John L. McCague, [attornet] in fact.
Q. And written by whom? A. Mr. John L. McCague.
Q. Do you know the handwriting of the next signature?
A. Yes sir.
Q. Whose is it? A. Mr. E. M. Morsman.
Q. Do you know the handwriting of the next signature?
A. Yes sir.
Q. Whose is it? A. Mr. Alexander G. Charlton.
Q. Do you know the handwriting of the next signature?
A. Yes sir.
Q. Whose is it?
A. Mr. Alexander G. Charlton, Secretary.
259 Q. Written by whom?
A. Mr. Alexander G. Charlton.
Q. Do you know the handwriting of the next signature?
A. Yes sir.
Q. Whose is it? A. J. J. Brown, Jr.
Q. Do you know the handwriting of the next signature?
A. Yes sir.
Q. Whose is it? A. Henry F. Wyman.
Q. That is yourself? A. Yes sir.
Q. Do you know the handwriting of the next signature?
A. Yes sir.
Q. Whose is it? A. Mr. Morris Levy.
Q. Do you know the handwriting of the next signature?
A. Yes sir.
Q. Whose is it? A. Mr. A. U. Wyman.
Q. Do you know the handwriting of the next signature?
A. Yes sir.
Q. Whose is it? A. Mr. George G. Wallace.
Q. Do you know the handwriting of the next signature?
A. Yes sir.
Q. Whose is it? A. Mr. M. C. Acheson.
Q. Do you know the handwriting of the next signature?
A. Yes sir.
260 Q. Whose is it? A. Mr. Charles W. Morton.
Q. Do you know the handwriting of the next signature? A. No, I do not.

Q. Do you know the handwriting of the next signature?
A. No sir.
Q. Do you know the handwriting of the next signature?
A. No sir.
Q. Do you know the handwriting of the next signature?
A. Yes sir.
Q. Whose is it? A. Mr. James H. Conrad.
Q. Do you know whose handwriting the next signature is in? A. Yes sir.
Q. Whose is it? A. Mr. Charles C. George.
Q. Do you know the handwriting of the next signature?
A. Yes sir.
Q. Whose is it? A. Mr. T. R. Neal.
Q. You may state whether or not these persons whose handwriting you have identified to this paper marked Exhibit "25" are the same persons—

Question withdrawn.

Q. Do you know the handwriting of the list of signatures on this paper? A. No, I do not think I do.
Q. You may state whether or not the signature which you have [identitied] to this Exhibit "25" are the signatures of the persons who held stock in the American National Bank bearing the same names which have been identified by you?
261 A. They are.

Cross-Examination

By Mr. Morsman.

Q. At what date, Mr. Wyman, was this paper, marked Exhibit "25", some of the signatures to which you have identified, signed? A. I do not know sir.
Q. Before or after January 1, 1896?
A. It appears to me it was after January 1, 1896.
Q. Do you know who procured the signatures?
A. No; I cannot recall that.
Q. What duties did you have to perform and did you perform as Cashier of the American National Bank after December 21, 1895?
A. My principal duty was the keeping of records of the bank as cashier;
Q. You mean by that the records of the stockholders' meetings and director's meetings? A. Yes sir.
Q. And those were the meetings which were held with reference to the so-called voluntary liquidation? A. Yes sir.
Q. The assets of the bank had all been turned over to the Union National Bank? A. Yes sir.
Q. And its liabilities assumed by the Union National Bank?
A. Yes sir.

Q. These three notes that you have testified about, marked Exhibits "2", "3" and "4" represent, I believe you said, the difference between the amount of liabilities assumed by the Union National Bank and the amount of assets which it received from the American National Bank as cash?

A. Yes sir.

Q. Under the agreement of December 21, 1895?

262 A. Yes sir.

Q. The American National Bank did not owe the Union National Bank any money at that time, did it?

A. At what time, sir?

Q. December 21, 1895, and afterwards?

A. For a few days immediately after this arrangement was consummated there was a balance which was subsequently wiped out through some collections that were made, that is, the notes aggregating $201,000 were made of even $67,000 each at the request of Mr. Ford, at his suggestion that a balance, I think of $10,000 or $12,000 which we expected within a few days would be paid into the Union, and consequently it was not necessary to take notes including that amount, whatever it was.

Q. That was not included in the three notes of $67,000 each?

A. No sir, that was not included.

Q. Then those notes were given to the Union National Bank for the purpose of offsetting liabilities of the American National Bank which the Union National had assumed?

A. Yes sir.

Q. And neither you nor any of the officers of the American National Bank or the Union National Bank at the time expected that the American National Bank would have to pay anything to the Union National Bank under that contract of December 21, 1895, did they?

Complainant objects as calling for a conclusion and not proper cross-examination, and as the testimony of the attorney rather than of the witness.

A. We expected the assets to pay that indebtedness.

263 Q. And the assets turned over to the Union National largely exceeded the amount of these three notes at their face value? A. Yes sir.

Q. You were employed by Mr. Kimball, were you not, acting in his capacity as trustee, as he is designated in that contract of December 21, 1895? A. Yes sir.

Q. And he paid you for your services? A. Yes sir.

Q. So that you were representing him in the collection of the assets of the American National Bank which were turned over to the Union National Bank? A. Yes sir.

Q. At the time of the passage of the resolution of the stockholders directing the directors of the American National to take steps looking to the liquidation of the American National Bank and the subsequent proceedings of the American National Bank ostensibly for its voluntary liquidation, the American National Bank had no assets, had it? A. No sir.

Q. And its liabilities had been assumed by the Union National Bank? A. Yes sir.

Q. Well, what then was done by the American National, its directors or officers in the way of liquidating the business of the bank?

A. We went through the form prescribed by the National Banking Law.

Q. Passing the necessary resolutions? A. Yes sir.

264 Q. And gave the notice? A. Yes sir.

Q. But in fact there was nothing to liquidate, was there? A. No sir.

Q. It was a mere form.

A. We went through the form, that was all, yes sir.

Q. Did Mr. Kimball himself exercise personal supervision over the collection and disposition of the assets turned over by the American National Bank to the Union National Bank, or was that under your care and the care of Mr. Wattles of the Union National?

A. I looked after the details under Mr. Kimball's instructions and the disposition of the funds and the settlement of the various collections were jointly considered by Mr. Kimball and the officers of the Union National Bank.

Q. If you were making a collection of some debtor of the American National Bank you called in Mr. Wattles to take his advice and direction in regard to what you should do in the matter?

A. Mr. Kimball usually took that matter up with him in nearly every instance.

Q. It was in fact all carried on under the direction and supervision of Mr. Wattles of the Union National Bank, was it not?

Complainant objects as an attempt to put in testimony on the part of the attorney and not proper cross-examination.

A. It was done after joint consultation excepting where collections were made which paid the full amount of the amount due, but where any compromise was entered into, or any matter taken up which required concessions, it was taken up

265 with the Union National for their consent and suggestion.

Q. The Union National had then taken possession of the office room occupied by the American National? A. Yes sir.

Q. And the assets of the American National which were turned over to the Union National were kept in that office?

A. Yes sir.

Q. And kept in the same vault with the Union National Bank's business? A. Yes sir.

Q. Now, when the transfer was made December 21, 1895, the Union National took all of the cash items then held by the American National Bank, did it not, in its own possession?

A. Yes sir.

Q. And all of the Bills Receivable of the American National Bank which the Union National Bank decided to accept in lieu of cash or as the equivalent of cash? A. Yes sir.

Q. And the Union National, at the same time carried on its books all the deposit accounts of the American National Bank, did it not?

A. They were transferred from the American National to the Union National, yes sir.

Q. So they would show a liability on the part of the Union National to the depositors of the American National Bank?

A. Yes sir.

Q. And the Union National Bank also assumed the Bills Payable of the American National Bank which was also a liability? A. Yes sir.

266 Q. So you deducted the assets which the Union National accepted as cash from this liability assumed by the Union National in order to ascertain the amount for which these notes were given, these three notes marked Exhibits 2, 3, and 4? A. Yes sir.

Q. Is it not true, Mr. Wyman, that the Union National desired those three notes merely for the purpose of showing assets to offset the liability which it had assumed in excess of the cash and Bills Receivable which it has accepted as cash from the American National Bank?

Complainant objects as not proper cross-examination, an attempt to put words in the mouth of the witness, and as an attempt to get him to construe the contract.

A. I could not answer that question as I was not in touch with the officers of the Union National Bank on matters of this contract; I did not know what their intentions were.

Q. You said, I believe, that the American National Bank did not owe the Union National Bank that amount of money or any portion of this $201,000 at that time?

Mr. McCulloch: He has not said that at all.

Q. It is true, is it not, Mr. Wyman, that at the time of the execution of these notes, December 23, 1895, the American National Bank did not owe to the Union National Bank $201,000 or any portion of that sum?

A. Well, we had turned them over all of our assets.

Q. Well, the American National Bank did not owe that sum or any portion of it, did it?

A. I do not know how to answer that question.

267 Q. Well, if you have any doubt about it, will you state anything out of which that indebtedness arose, or any part of it?

A. The indebtedness arose through the assumption by the Union National Bank of the deposits and Bills Payable and other indebtedness of the American National Bank.

Q. Now, on December 23, 1897, the Union National Bank had not paid those deposits, had it?

A. No; they had not paid them.

Q. They had merely agreed to assume them and had given notice of this assumption? A. Yes sir.

Q. So there was not any indebtedness whatever between or from the American National Bank to the Union National Bank unless it arose out of this contract of December 21, 1895?

A. That is the only way it arose.

Q. You have testified with reference to a report set forth in a stockholders' meeting under date of January 12, 1897, purporting to be signed by yourself and approved by Mr. Kimball, and containing a comparison of assets and liabilities of the American National Bank December 21, 1895, and January 1, 1897, now that statement was designed by you, was it not, to show the progress of the liquidation that you and Mr. Kimball were making pursuant to the contract of December 21, 1895. A. That was the purpose of the statement, yes sir.

Q. And when you say that the deposits $239,947.69, had at the date of this report been paid you mean that they had simply been transferred to the books of the Union National Bank?

A. They had been paid so far as the American National Bank was concerned.

268 Q. You do not mean to say they had all been paid to the depositors?

A. We knew nothing about that, no sir.

Q. You did not know what portion had been paid to the depositors? A. No sir.

Q. Of course, any depositor that demanded the money got it? A. Yes sir.

Q. But if he continued to have his account remain with the Union National Bank, why they simply kept the account?

A. Yes sir.

Q. And in this report, so far as you set forth Resources under date of January 1, 1897, such resources consisted of the assets turned over by the American National to the Union National, and which had not been converted or liquidated in money? A. Yes sir.

Q. Assets which you and Mr. Kimball were still trying to collect? A. Yes; that represents those assets.

Q. Loans and discounts, $245,918.54, was the amounts of notes or Bills Receivable which the American National had turned over to the Union National under the contract of December 21, 1895, and which still remained not collected?

A. Yes sir.

Q. And the item of stocks, securities, claims, etc., $51,394.63, was also assets turned over in the same way? A. Yes sir.

Q. And the item of real estate owned, $54,980.97, how was that transferred from the American National Bank to the Union National Bank, if you know?

A. There was no transfer of any titles.

269 Q. No deeds made? A. No deeds made, no sir.

Q. Was there no deed made to Thomas L. Kimball, Trustee, of the transfer of any kind other than the contract of December 21, 1895? A. No sir; none that I can recall.

Q. What was this cash item marked in litigation $5,000?

A. That was a certificate of deposit issued by the Union National Bank which was held by the American National Bank and was in litigation between the two banks.

Q. That litigation arose before December 21 1895, did it not? A. I think it did, yes sir.

Q. And the item of profit and loss, in Resources, $26,805.71, what is that item?

A. That was the aggregate of the items charged off to that account.

Q. Well, it was increased from December 21, 1895 about $14,000, how did it come to be increased?

A. That was increase-, through the charging off of what we considered bad debts.

Q. In the process of your and Mr. Kimball's liquidation?

A. Yes sir.

Q. Bad debts and discounts to debtors during settlements with them?

A. Yes, various items; if a note were settled for a portion of its face, of necessity the balance unpaid would have to be charged to profit and loss.

Q. And in the column of Resources it represents loss? A. Yes sir.

270 Q. Did Mr. Kimball keep a set of books while you and he were making these collections?

A. Yes; a set of books was kept, and was kept with--

Q. And was kept with reference to these particular collections and these particular assets, I mean? A. Yes sir.

Q. Now, when you say that these assets were turned over to the Union National Bank, were you working for the Union National Bank in collecting these assets? A. No sir.

Q. Was Mr. Kimball drawing a salary from the Union National Bank for the collection of these assets?

A. I do not know.

Q. So far as you know he was not?

A. Yes sir; so far as I know he was not.

Q. And when you say that the assets were turned over to the Union National Bank, don't you simply mean that the assets were in the same office with the Union National Bank, but under the control of you and Mr. Kimball?

Complainant objects as leading and being an attempt to put words in the mouth of the witness, testimony, of the attorney rather than the witness.

A. All the assets were turned over to the Union National Bank.

Q. Explain to us what you mean by that, was there any difference between the turning over of the cash and the cash items and these assets which you and Mr. Kimball were trying to collect?

271 A. The cash and cash items—the cash went into their cage, into their cash; the bills receivable which they took, that is the notes, went into their books; the other assets were kept intact for liquidation under the direction of Mr. Kimball.

Q. Now, in what way were they turned over to the Union National Bank?

A. When the Union National Bank came into the office they took possession of everything that was there.

Q. That was all—the mere fact that the Union National came in there and transacted its business, and these assets Mr. Kimball never moved out, did he? A. No sir.

Q. Then there was a difference even in your mind, was there not, as to how the cash and cash items and bills receivable which were taken as cash by the Union National Bank and these other assets which Mr. Kimball controlled in the way they were turned over?

Complainant objects as leading and suggestive.

Q. Was there a difference?

A. There was a difference in the way that I state.

Q. Was there any transfer of the real estate of the American National Bank to the Union National Bank?

A. No sir; not in the way of making any deeds or formal transfer.

Q. Was there any transfer of the individual notes of the American National Bank which Mr. Kimball and you were attempting to collect to the Union National Bank?

A. No endorsement of those notes, no sir.

272 Q. In what way were the Bills Receivable which were taken as cash, turned over to the Union National Bank, were they endorsed to the Union National?

A. I cannot recall that; I am under the impression they were, but I am not certain about that.

Q. Those items Mr. Kimball and you had nothing whatever to do about collecting? A. Nothing at all, no sir.

Q. Do you know whether or not these items which Mr. Kimball and you had charge of went on to the books of the Union National Bank or not? A. No, I do not.

Q. You do not know whether they did or not?

A. I never knew anything about the books of the Union National.

Q. Did you ever hear of their being on those books during the year and a quarter that you were there? A. No sir.

Q. So far as you know they never did go on the books of the Union National?

A. I never knew anything about that fact, no sir.

Q. You never heard they did?

Complainant objects as immaterial.

A. No sir.

Q. Where were these assets kept which you and Mr. Kimball were controlling?

A. At night they were kept in the vault; in the day time they were on my desk.

Q. And who took them back and forward from the vault to your desk? A. I did.

273 Q. At the time of this exchange which resulted in the giving of these three notes, Exhibits 2, 3, and 4, you were officing at that same place as cashier of the American National Bank, were you not? A. Yes sir.

Q. Just before the change? A. Yes sir.

Q. And then when the Union National came down there and took charge of the office to transact its business you and Mr. Kimball stayed there with your desks? A. Yes sir.

Q. And controlled in the manner you have just described these assets which you were collecting? A. Yes sir.

Q. How many vaults are there in that office? A. Two.

Q. In which vault did you keep your papers?

A. In the book vault.

Q. And was that the same vault in which the Union National kept its assets, that is the current business of the Union National Bank?

A. I don't know where they kept their notes and Bills Receivable.

Q. But you kept yours in what is called the book vault?

A. I kept mine in the book vault, yes sir.

Q. You stated on cross-examniation that you simply went through the form of liquidation, did you have anything to do or you did have something to do, did you not, with the Treasurer and Comptroller with reference to your bonds and your circulation, etc. A. Yes sir.

274 Q. That was done by the American National Bank under the orders of its stockholders? A. Yes sir.

Q. Done by you and Mr. Kimball?

A. My recollection is that the law states how that is to be done, be done by the cashier, and the forms sent by the Comptroller are with that view.

Q. And whatever was done with reference to that you did?

A. Whatever was necessary to do, those forms to be filled out, I did.

Redirect Examination

By Mr. Macomber.

Q. Just describe what was done, Mr. Wyman?

A. We had $50,000 of United States bonds which were sold.

Q. Deposited to secure circulation?

A. Yes, we sold those bonds and instructed the Bank in New York to forward to the Comptroller or Treasurer of the United States $45,000, to take up the circulation, or about that amount, whatever was necessary, and the proceeds were remitted here and went into the general collection fund.

Q. You sold your bonds through a New York Bank?

A. Yes sir.

Q. For money which he deposited or of which he deposited $45,000 for the redemption of your outstanding currency?

A. Yes sir.

Q. And do you remember how much the bonds were sold for?

A. My recollection is that the bonds were sold for about $1,08 or thereabouts; I could not say.

Q. So there was something near $9,000 over and above the amount required for the redemption of your currency?

A. No; we had about $50,000 of bonds, so that we
275 had about from $4,000 to $5,000 premium—yes, in addition to the $5,000—about $9,000, that is true, over and above the circulation.

Q. And that was treated just like all other accounts of the American National Bank? A. Yes sir.

Q. Under this contract of December 21, 1895? A. Yes sir.
Q. And you attended to that matter and got the money?
A. I attended to it and got the money, yes sir.

The further taking of depositions under the annexed notice is adjourned until tomorrow morning at 10 o'clock.

HENRY F. WYMAN,

Filed Dec. 30, 1901. Geo. H. Thummel, Clerk.

276 Omaha, Nebraska, Oct. 30, 1901.

The further taking of testimony under the annexed notice is now resumed, the same parties being present as on yesterday.

H. E. Rainey, of lawful age, being by me first duly examined, cautioned and solemnly sworn, as hereinafter certified, deposeth and sayeth as follows:

Direct Examination

By Mr. Macomber:

Q. You may state your name, age and residence, Mr. Rainey? A. Henry E. Rainey, age 37; residence Omaha.
Q. How long have you lived in Omaha, Mr. Rainey?
A. Nearly 16 years.
Q. What is your present business?
A. General Bookkeeper at the Union National Bank.
Q. How long have you been in that position?
A. Twelve years.
Q. Do you remember the instance of the Union National Bank taking the place of business of the American National Bank? A. Yes sir.
Q. What was your business at that time?
A. I was the general bookkeeper of the Union National Bank at that time.
Q. Were you present at the time the Union National entered upon the business in the building that it took from the American National Bank? A. Yes sir.
Q. You remember the fact of the contract that was made between the two banks, do you? A. Yes sir.
277 Q. Do you know about the notes that the Union National Bank were to take absolutely as theirs of the assets or did take? A. Yes sir.
Q. You may state how, when the Union National Bank took possession there, how it handled the deposit accounts of the American National Bank?
A. Well, the books of the American National Bank showed their balances, the books showed that they had so many in-

dividual deposits, so many time certificates, so many demand and so many deposits due to banks and bankers, and these accounts were transferred bodily to the books of the Union National Bank.

Q. Do you recollect how long a time that took?

A. How long it took to transfer the accounts?

Q. Yes sir.

A. Well, we went over there Saturday afternoon as soon as we balanced up over at the Union National, and after the American National had balanced up their books, and we worked all during Saturday evening up, I would say until 10 or 11 o'clock and pretty much all day Sunday, and by Monday morning about the opening hour we were in pretty fair shape to open up for business; we had transferred all the individual names to our individual balance book, and the names of the banks and bankers to our banks and bankers, balance book, so it was practically the same as having opened up so many new accounts for the Union National Bank.

Q. Now, when the depositors of the American National commenced to come in what did you do towards adjusting with them?

A. We gave them a new pass book with the name of the Union National Bank and showing that they had so much money on deposit in the Union National Bank.

278 Q. About what proportion in number would you judge continued their accounts?

A. Well, I would think that probably 200 of them continued for sometime.

Q. How many accounts were there in all, do you recollect, about?

A. About very close to 400 individual accounts, and probably eight or ten bank accounts.

Q. What do you mean by bank accounts?

A. Well, accounts of country banks.

Q. What public officers were depositors in the American National Bank that were so transferred?

A. The City Treasurer and the County Treasurer.

Q. You may state if you recollect about how many of the depositors appeared the first day, Monday?

A. Well, I would think that 100 were in there the first day; I know that we were very busy all day long, principally with the depositors of the American National Bank.

Q. Have you quite an accurate idea of about how much money you paid out t them the first day? A. In cash?

Q. Yes sir.

A. No sir, I could not give much idea as to that.

Q. Do you know about how much in the aggregate of money of the American National Bank deposits that were to be paid during December or by the first of the year?

A. Well, the County Treasurer, his money; he was to go out of office, I believe on the 9th of January, so the chances were that the county funds, they would be called upon to pay the county funds in January and I do not know about
279 the city treasurer; and then there were time certificates and demand certificates to be paid shortly after the first of the year.

Q. About how much was paid out in the first thirty days on these accounts?

A. Well, I would think $50,000 to $75,000; that is just on those accounts I have mentioned.

Q. No, altogether?

A. Well, of course, we paid a great deal of money these American National depositors that continued to do business with the Union National, of course, they checked against their accounts.

Q. Well, I am speaking about money, how much?

A. Well, from $50,000 to $75,000, I would think.

Q. The Union National Bank has been in business ever since? A. Yes sir.

Q. And what is the fact as to all the depositors of the American National Bank that were transferred having been paid their money when they wished it?

A. Every depositor of the American National that wished his money from the Union National Bank could get it at any time.

Q. What proportion of them either took their money or took a bank deposit book from the Union National Bank?

A. Well, I would say that three-fourths of them—that either took their money or a book? Well, I would say that three-fourths of them did; there were a great many small balances, I suppose from $1.50 up to $10.00, that were not drawn out as called for for some time.

Q. Then you did not issue pass books for those?
280 A. Not unless they came in and requested that we do so.

Q. Mr. Rainey, I will show you the three promissory notes that have been identified as Exhibits 2, 3, and 4, dated on the 23rd day of December, 1895, and ask you if you recollect the execution of those notes? A. Yes sir.

Q. Now, what books of the American National Bank did you have to inspect to show the [accurancy] of the amounts to arrive at in ascertaining how much money was paid out by the Union National or assumed?

A. We had their daily trial balance book and their individual balance books, and their banks and bankers' balance book.

Q. Those were left with you for inspection? A. Yes sir.

Q. Did you go over those books as book keeper of the Union National Bank?

A. Yes, I went over those balance books, page by page, and footed the various columns and arrived at the grand total.

Q. I will ask you what was taken absolutely by the Union National Bank, if you recollect about the amount?

A. Well, about $37,000 in cash, you mean, and—

Q. I have reference to notes?

A. Well, between $20,000 and $30,000, I do not remember the exact amount, but it was less than $30,000.

Q. Do you remember how much cash the American National Bank had? A. Something like $37,000.

Q. And there was a cash item of $15,000, what was
281 that; in the American National Bank?

A. I don't remember a $15,000 item.

Q. Do you remember what the Bills Payable of the American National Bank were? A. $50,000.

Q. You may explain what those were?

A. One was to the First National Bank of New York, and one to the Minots, and another to the American Exchange National of Chicago, I think, and one to an individual, I do not remember his name.

Q. I will hand you this sheet that you made out, perhaps that might call your attention to it?

A. First National Bank of New York, $18,000; American Exchange National Bank, Chicago $10,000; William Minot, $7,000; M. Shesterger, $15,000; total $50,000.

Q. How soon were those paid?

A. Shall I give the dates.

Q. Yes, if you can.

A. The First National Bank of New York was paid December 26, 1895; American Exchange National Bank of Chicago was paid on the 8th of January, 1896; William Minot paid on the 28th day of December, 1895; M. Shesterger, $15,000 January 10, 1896.

Q. What were those Bills Payable evidenced by?

A. These First National of New York, American Exchange of Chicago, William Minot and M. Shesterger, each one held a note of that amount signed by the American National Bank.

Q. And were those sums due at the time you paid them?

A. Yes sir.

Q. You may state whether or not any of them were
282 past due when you took possession there?

A. No sir; well, I could not state whether any of them were past due or not.

Q. Did you examine the books of the American National Bank at the time that you took possession there to ascertain the condition of all the funds? A. I did not count their cash.

Q. Can you ascertain the fact from your examination of their books at that time whether they had the required cash on hand that the law requires?

Each of the respondents object as incompetent, calling for the conclusion of the witness, for the further reason that the witness has already testified that he did not count the cash.

A. Well, they did not have the required legal reserve.

Each of the respondents moves to strike out the answer as a conclusion.

Q. What amount of cash would be required under the funds as shown on their books?

Each of the respondents object as calling for the conclusion of the witness.

A. Well, they were required to have 25 per cent of their deposits in cash and balances with Reserve Agents.

Q. I am getting your knowledge of the funds from the examination you made of the books, for you to tell as an expert how much the law required they should have on hand?

A. Well, I don't remember the exact figures.

283 Q. Have you any memoranda that you have made from an examination of the books to ascertain whether they had on hand the required amount of cash?

Each of the respondents object as calling for the conclusion of the witness.

A. I have one, but not with me.

Q. Who is the Cashier of the Union National Bank at this time? A. J. W. Thomas.

Q. How long has Mr. Thomas been Cashier?

A. Since about the first of March, 1898.

Q. Do you know his signature? A. Yes sir.

Q. You may examine the endorsement on Exhibit 2, and state in whose handwriting the words "Pay Sumner Wallace or order, without recourse, Union National Bank, by J. W. Thomas, Aug. 8, 1893, its Cashier", you may state in whose handwriting that is?

A. That is in the handwriting of J. W. Thomas, Cashier.

Q. Mr. Rainey, what was done with the physical possession of the assets of the American National Bank that were not taken by the Union National Bank as absolutely theirs?

A. Well, the assets have remained in the possession of the officers of the American National Bank.

Each of the respondents moves to strike out the answer as it states the conclusion of the witness.

Q. Name the party that had possession of these assets first?

Each of the respondents object as calling for the conclusion of [thr] witness.

284 A. Thomas L. Kimball, President of the Bank.
Q. Of what bank?
A. Of the American National Bank.
Q. Do you remember when Mr. Kimball died?
A. I don't remember the exact date.
Q. You remember the fact of his death? A. Yes sir.
Q. You may state what the fact is as to whether or not the Union National Bank has ever had possession of these assets?

Each of the respondents object as calling for the conclusion of the witness, and his opinion.

A. No sir, they have not had possession of them.
Q. You may state what assets of the American National Bank went on to the books of the Union National Bank other than the cash items and the notes that they took absolutely, if any?

Each of the respondents objects as not the best evidence.

A. What other assets?
Q. Yes?
A. Other than those sundry bills receivable that we took?
Q. Yes. A. And besides the cash?
Q. Yes sir.
A. Well, we took the balances that they had with their eastern correspondents, is that what you refer to?
Q. And what else?
A. Nothing besides the cash and the balances with their eastern correspondents, and those sundry bills receivable.
285 Q. Do you know who had charge and attended to the collection of the assets of the American National Bank after this contract was made? A. Yes sir.
Q. You may state who did that?

Each of the respondents object as calling for the conclusion of the witness.

A. Henry F. Wyman attended to it for probably a year and a half.
Q. Who was Henry F. Wyman?

A. He was the Cashier of the American National Bank.
Q. And with whom was he connected in doing this, if anyone? A. Thomas L. Kimball, the President of the Bank.
Q. You say Mr. Wyman was there about how long?
A. I would think a year, to a year and a half.
Q. Where did they have their desks in the bank?
A. In the front part of the office of the Union National Bank.
Q. Was it in the same place that they occupied when they were acting as a bank for the American National Bank, or was it at another place? A. At another place.
Q. Do you know what vault they kept the assets of the American National Bank in? A. Yes sir.
Q. You may explain about the vaults there in that building?
A. Well, we have two vaults there, a money vault and a vault where we keep our books and papers, letter files,
286 etc., and shall I tell where—
Q. You describe the vaults, the question calls for that?
A. Well, the money vault is the south vault, and the book vault is the north vault, and we have a couple of letter files in there, a check file, and a rack for books in use.
Q. Where were the assets of the American National Bank kept? A. In the northwest corner of the book vault.
Q. And where does the Union National Bank keep its assets? A. They are kept in the money vault.
Q. Mr. Rainey, I will call your attention to Exhibit 3, and Exhibit 4, being two of the notes dated December 23, 1895, and ask you whether or not they have been paid?

Each of the respondents object as immaterial under the issues in this case, and no proper foundation laid.

Q. That is, if you know? A. They have not been paid.
Q. And who is the owner of them?
A. The Union National Bank.
Q. Mr. Rainey, I will ask you what this book is which the reporter has identified as Exhibit "26"?
A. That is the record book of the Union National Bank.
Q. What do you mean by record book?
A. A record of the proceedings of the Board of Directors.
Q. I will call your attention to the entry on page 25, commencing on page 25, under date of August 8, 1898, and ending on page 26 with the name of J. W. Thomas, Cas., and ask you whose signature that is?
287 A. That is the signature of J. W. Thomas, Cashier of the Union National Bank.

Complainant introduces in evidence the entry identified by the witness on Page 25 and page 26, being a record of Adjourned Regular Meeting held August 8, 1898, in the office of the Bank, which the reporter may mark Exhibit 27. (A copy of Exhibit 27 is found on page 266 hereof.)

Q. I will call the witness' attention to this book, marked Exhibit 26, Record Book, and will ask you whose signature that is under the following entry, "Minutes Regular Meeting of Board of Directors, held August 2, 1898, in the banking office. No quorum present; meeting adjourned to Monday, August 8, 1898, J. W. Thomas, Cashier", I will ask you whose signature that is?

A. That is the signature of J. W. Thomas, Cashier of the Union National Bank.

Complainant offers in evidence the [—] just read to connect with the other entry, the same being marked Exhibit 28. (A copy of Exhibit 28 is found on page 267 hereof.)

Q. Mr. Rainey, I will ask you, if you are familiar with and known about this Agreement between the American National Bank and the Union National Bank, Exhibit 1?

A. Yes, I am familiar with it and have read it.

Complainant now offers in evidence the contract marked Exhibit 1 (a copy of which is found on page 208 hereof.) And the original on page 205.

288 Complainant also offers in evidence the promissory notes dated December 23, 1895, being Exhibits 2, 3, and 4, copies of which are found on pages 213, 215 and 217, respectively and the originals on pages 212, 214 and 216, respectively.

Q. Mr. Rainey, what amount, if any, if you know, was found due from the American National Bank under this arrangements besides these notes?

A. On the 23rd of December?

Q. Yes, on a few days subsequent was there any cashier's checks or anything, any other? A. O, yes.

Q. Could you tell by looking at this memoranda, does this show what it was?

A. No; that memoranda does not; well, they are included in those items there, those two items.

Q. Well, whatever they were, they were discharged and paid, were they? A. Yes sir.

Q. You may state what the fact is in finding these amounts against the American National Bank under this arrangement what the fact is about Henry Wyman, Cashier, verifying the amounts and seeing they were correct, with you?

A. Well, he and his bookkeepers had gone over those amounts and had balanced up the books before I reached there in the afternoon, and then the books were turned over to me to prove.

Q. What day do you refer to now?

A. That is the 21st of December, 1895, Saturday afternoon.

289 Q. You think that was on Saturday?

A. Yes; at the close of business Saturday afternoon.

Cross-Examination

By Mr. Morsman.

Q. Mr. Rainey, I believe you said or intended to say that there was some liability of the American National Bank assumed by the Union National Bank in excess of these three notes for $67,000 and also in excess of the amount for which the Union National Bank got cash or Bills Receivable as cash; you spoke of it as being cashier's checks, or connected with cashier's checks?

A. Well, I said it was included in those items, the cashier's checks and the certified checks, not the cashier's check and certified checks, but time certificates and demand certificates.

Q. That amount, whatever, it may have been, was not included in these notes of $67,000 each?

A. Yes; those three notes went to make up this.

Q. Then it was included in the three notes of $67,000?

A. Yes sir.

Q. So that $201,000 was ascertained to be the total liabilities assumed by the Union National in excess of the amount which was offset by the cash, cash items and Bills Receivable received as cash by the Union National Bank?

A. I do not know as I understand your question.

Q. (Question read).

A. No sir; I do not remember of making any statement like that.

Q. Well, was it, or was it not the total amount?

290 A. The total amount that the Union National assumed of the American National Bank?

Q. The total amount in excess of the amount the Union National received in cash, cash items, and Bills Receivable taken as cash?

A. No sir; there was nothing in excess of $201,000.

Q. Nothing in excess of $201,000, is that what you say?

A. Well, I can tell you how much the Union National, how many deposits and Bills Payable the Union National received from the American National.

Q. What was he liability as ascertained, assumed by the Union National Bank?

A. The total assumed, $289,097.30.

Q. Now what was the total amount of cash, cash items and bills receivable taken as cash by the Union National Bank?

A. $88,097.30.

Q. The difference being $201,000.? A. Yes sir.

Q. And that difference was covered by the three notes of $67,000 each? A. Yes sir.

Q. On the 21st day of December, 1895, the Union National Bank moved from its former place of business into the offices on and prior to that day occupied by the American National Bank, did it not? A. Yes sir.

Q. And took possession of those offices? A. Yes sir.

Q. And continued to carry on its business there?

A. Yes sir.

Q. And no other banking business was carried on there?

A. No sir.

291 Q. The officers and clerks of the Union National Bank had access to both vaults, did they not? A. Yes sir.

Q. And the Union National Bank kept its books and other papers in what you call the book vault? A. Yes sir.

Q. But its cash and money and Bills Receivable were kept in what you call the money vault? A. Yes sir.

Q. Did it keep its Bills receivable in the money vault?

A. Yes sir.

Q. The money vault was the burglar proof vault, was it?

A. Yes sir.

Q. And the book vault was merely a fire proof vault?

A. Yes sir.

Q. You say that Mr. Henry F. Wyman attended to the collection of the remaining assets of the American National for Mr. Kimball, now do you know whether or not Henry F. Wyman was paid by the Union National Bank for his services?

A. He was not paid by the Union National Bank, no sir.

Q. Can you give any explanation why he was not paid by the Union National Bank under that provision of the contract of December 21, 1895, which required the Union National Bank to liquidate the assets of the American National Bank without expense to the American National?

Complainant objects as calling for the conclusion of the witness, and uncertain.

A. I know of no reason.

Q. When the Union National Bank moved into the offices of the American National Bank and took possession you immediately transferred from the books of the American

292 National Bank all of the deposit accounts showing a balance due the depositor to the books of the Union National Bank? A. Yes sir.

Q. So that, so far as the bookkeeping was concerned the former depositors of the American National Bank then became the depositors of the Union National Bank? A. Yes sir.

Q. And had the same credits standing upon the books of the Union National Bank? A. Yes sir.

Q. Any depositor of the American National Bank who came in and wanted his money got it from the Union National Bank?

A. Yes sir.

Q. But if he was willing to, he simply continued his business with the Union National Bank? A. He did, yes sir.

Q. Checking against the balance transferred from the books of the American National and making deposits in the Union National Bank? A. Yes sir.

Q. Did the City Treasurer check out his balance or continue his account with the Union National Bank?

A. He had an account with the Union National Bank.

Q. Prior to December 21st?

A. Prior to December 21st, 1895, yes sir—transferred to the Union National Bank, and was checked out after the first of the year, I don't know just when.

Q. Entirely, or did the account continue a current account?

A. It continued as a current account.

Q. How was it with the County Treasurer?

293 A. Well, the County Treasurer, H. B. Irey was County Treasurer at the time of the transfer, and he was succeeded by Heimrod about the 9th of January, 1896—these balances were transferred and mostly checked out during January 1896.

Q. By Heimrod? A. By Heimrod, yes sir.

Q. But Heimrod continued to keep a current account with the Union National Bank, did he not? A. For a time.

Q. For how long?

A. Well, I could not tell without referring to the ledger.

Q. Can you approximate it?

A. I noticed that most of the money of the county treasurer was checked out during January 1896.

Q. Yes, but how long did [you] continue to keep a current account with the Union National Bank?

A. Well, I do not remember.

Q. All of your testimony with reference to these matters of amounts, have been made from memory, has it not, and not from the examination of the books during the time you were testifying? A. All of my testimony?

Q. Yes sir.

A. No sir, most of my testimony is from actual figures.

Q. You have not had the books present while you were testifying? A. I had a memoranda.

Q. What memorandum? A. This paper.

Q. The paper now before you? A. Yes sir.

Q. The paper now before you however, does not give
294 any information as to the number of depositors who closed their accounts immediately after December 21st, 1895? A. No sir.

Q. Nor the amount in dollars and cents that depositors of the American National Bank withdrew from the Union National Bank immediately after December 21st, 1895?

A. No sir.

Q. You have no data before you now from which you can give that information? A. No sir.

Q. Of course it was the effort of the Union National Bank, was it not to procure all of the old depositors of the American National Bank to continue their business with the Union National?

A. They would have liked most of them to have continued.

Q. And the most of them, so far as amounts were concerned, did continue, did they not? A. For a time.

Q. But you cannot tell how long? A. No sir.

Q. Was there more than one assignment made by the Union National Bank to the plaintiff Sumner Wallace of the first maturing of the three promissory notes for Sixty-seven Thousand dollars each?

A. I do not know of any other assignment.

Q. You have no knowledge of any other? A. No sir.

Q. What was the aggregate amount of the deposits of the American National Bank, December 21, 1895?

A. $239,097.30.

295 Q. That included open accounts, demand certificates and time certificates? A. Yes sir.

Q. All classes of deposits?

A. Yes sir, all classes of deposits.

Q. And what was the amount of cash resources of the American National Bank at that time?

A. Turned into the Union National Bank?

Q. Well no, what was the amount as shown by the books of the American National Bank?

A. I have not that memoranda here before me. The only memoranda I have is what the Union National Bank took from the American National.

Q. What was the amount received by the Union National Bank from the American National Bank of cash resources?

A. $48,167.79.

Q. That includes currency, gold, silver and all the coin?

A. Yes sir.

Q. Does it also include the balance to the credit of the American National Bank with its different correspondents in other cities? A. Yes sir.

Q. All checks and other cash items?

A. No sir, checks, not cash items.

Q. What do you mean by that?

A. Well, I mean checks, the checks on other banks in the city, or checks on eastern banks, drafts.

Q. That is not included in the $48,000.00?

A. Yes sir, I mean, those checks are included in there but not necessarily cash items; they might have had a cash
296 item in there that we would not have accepted.

Q. Well, did they?

A. Not included in this $48,000.00.

Q. Did they have cash items that were not included in this $48,000.00? A. Yes sir.

Q. What were they?

A. Well, I know of one certificate of deposit, of $5,000.

Q. What was that?

A. That was issued by the Union National Bank.

Q. To whom? A. To John L. McCague.

Q. And held by the American National?

A. Held by the American National, yes sir.

Q. And endorsed by John L. McCague? A. Yes sir.

Q. And did the Union National refuse to receive that as cash from the American National Bank under this agreement of December 21, 1895?

A. I know they did not take it.

Q. At any time?

A. They did not take it at this time.

Q. Did they afterwards?

A. It was in litigation at the time.

Q. No, but did they afterwards take it, the Union National?

A. Yes, I believe that in after years it was turned in.

Q. They took it and paid it?

A. It was paid I believe on a compromise of some kind.
297 Q. Paid by the Union National? A. Yes sir.

Q. It was an ordinary certificate of deposit showing that John L. McCague had deposited $5,000 in the Union National Bank, was it not?

A. Well, from the face of it you would have thought it was an ordinary certificate of deposit.

Q. Well, that is what it purported to be on its face?

A. Yes sir.

Q. And John L. McCague had transferred it to the American National Bank? A. Yes sir.

Q. Now what other cash item was there held by the American National Bank to your knowledge at that time?

A. I have no knowledge of any.

Q. And what did you give the amount of the deposits of the American National? A. $239,097.30.

Q. Mr. Rainey, you may examine the records of the proceedings of a Special Meeting of the Board of Directors of the Union National Bank found in this record Book on page 23, and state whose signature is affixed to the record, it commences on page 23 and continues on Page 24?

A. The signature of J. W. Thomas, Cashier of the Union National Bank.

The respondents offer in evidence as part of the cross-examination of the witness the record of the Special Meeting of the Board of Directors of the Union National Bank, on April 21, 1898 and commencing on Page 23 and continuing on
298 Page 24 of the record of such proceedings and marked Exhibit 29. (A copy of Exhibit 29 is found on page 268 hereof).

Complainant objects to the offer of Exhibit 29 as not proper cross-examination.

Redirect Examination

By Mr. Macomber.

Q. Mr. Rainey, referring to this Exhibit 29, that has just been offered by the defendant, you remember the fact of it having been tried to get the stockholders of the American National Bank to go into an arrangement to save the assets of the Bank? A. Yes sir.

Q. You know whether that was carried out or whether it failed? A. Well, it was not carried out very fully.

Q. Were the other two notes there ever assigned to Mr. Wallace? A. No sir.

Q. Now you spoke about these $50,000 of Bills Receivable, how soon after December 21st, 1895 was that paid?

A. Bills Payable of the American National Bank?

Q. Yes you gave that once. About what portion of the deposit were paid the first thirty days?

A. Well, I would think they paid $100,000.00.

Q. Of just the deposits or including the Bills Receivable?

A. Of the deposits.

Q. Then all together on account of the liabilities of the American National Bank, how much was paid, how much the first thirty days? A. Well, that would be $150.000.00.

299 Recross-Examination

By Mr. Morsman.

Q. You are speaking from memory, are you not, as to the amount of deposits paid in the first thirty days? A. Yes sir.

Q. You said in your examination in chief, that the amount paid in the first thirty days was from $50,000 to $75,000, why do you now change it to a $100,000.00?

A. Well, I may have thought it was a little more than Seventy-five thousand dollars.

Q. You do now think it was more than $75,000?

A. I am merely testifying from my memory.

Q. Is it memory or are you guessing?

A. Well, I never made a list of the amounts paid.

Q. And in making this guess or estimate that you now give, that it was $100,000.00, you include all sums paid out to depositors do you not? A. Yes sir.

Q. And that would include the sums paid out to depositors who continued their accounts with the Union National Bank as current accounts?

A. I would mean by that that $100,000 of the deposits transferred by the American National Bank to the Union National Bank had been paid out.

Q. Yes, but you include in that the amount paid to depositors who continued a current account with the Union National Bank, do you not?

A. Yes that would include a portion of them?

Q. And those same depositors would be putting money back into the Union National Bank, while they were taking out, would they not? A. Those that continued, yes sir.

300 Q. You stated that this arrangement provided for by the Resolution of the Board of Directors which has been introduced in evidence and marked Exhibit 29, being the record of the proceedings of a Special Meeting of the Board held April 21st, 1898, was not very fully carried out, what do you mean by saying it was not very fully carried out?

[Q.] That all the stockholders of the American National Bank did not pay in.

Q. But some of them did pay in? A. About two of them.

Q. Do you know who they were?

A. I know who one of them was.

Q. Who was he?

A. The stock held by the American Building Company, I believe.

Q. The National Bank Building Company?

A. Yes, the National Bank Building Company.

Q. That was paid in was it? A. Yes sir.

Q. That National Bank Building Company owns the building that the Union National Bank moved into December 21, 1895, and still occupies? A. I believe they own it.

Q. And how much did the National Bank Building Company pay in pursuant to this resolution of the Board of Directors of April 31, 1988?

A. My recollection is it was $60,000.00.
Q. $61,500?
A. Something like $60,000 is as near as I can remember.

301 Q. And what did the Union National Bank give to the National Bank Building Company in writing, if you know, upon receipt of that $61,500?
A. I don't know of anything.
Q. You do not know of anything? A. No sir.
Q. Aside from this resolution of the Board of Directors of April 21, 1898, you do not know of anything more than that?
A. No sir, I do not.

HENRY E. RAINEY.

The further taking of testimony under the annexed [—] is adjourned until tomorrow morning, October 31st, 190[illegible], at ten o'clock.

302 Omaha, October 31st, 1901, 10 o'clock A. M. The further taking of testimony is resumed pursuant to adjournment. The same parties being present as on yesterday.

Henry F. Wyman, recalled by complainant.

Direct Examination

By Mr. McCulloch.
Q. You may state Mr. Wyman, what the amount of capital stock of the American National Bank was?
A. $200,000 [dollars].
Q. Divided into how many shares?
A. Two thousand shares of $100 each.
Q. Was that always the capital stock of the Bank from the time it was organized until the liquidation took place?
A. Yes sir.

HENRY F. WYMAN.

Filed Dec. 30, 1901. Geo. H. Thummel, Clerk.

303 James Burness, of lawful age, being first duly examined, cautioned and solemnly sworn, as hereinafter certified, deposeth and sayeth as follows, viz:

Direct Examination

By Mr. McCulloch.
Q. You may state your name, age and place of residence?
A. James Burness, age 43, residence, Omaha, Nebraska.
Q. How long have you lived in Omaha?
A. About eighteen years.
Q. How long were you acquainted with Mr. Thomas L. Kimball in his life time? A. About eighteen years.

Q. Do you remember the date of his death? A. I do.
Q. You may state the date of it? A. October 8, 1899.
Q. You may state what relation, as an employee of Mr. Kimball you were? A. I was his secretary.
Q. For how long? A. Well for about 16 years.
Q. What were your duties as such secretary?
A. Well to attend to all his business, private and otherwise.
Q. What position do you hold now, in reference to the assets of the American National Bank?

Each of the respondents object as calling for the conclusion of the witness.

A. I am Trustee of the assets.
304 Q. What positions and what was the general business that Mr. Kimball was in, while you were Secretary for him? A. Previous to his banking experience?
Q. Just generally during the time you were his Secretary?
A. He was Assistant General Manager, Traffic Manager, Third Vice President, Acting General Manager, General Manager, Asst. to the President of the Union Pacific Railway, President of the Depot Company, and afterwards President of the American National Bank and Agent or Trustee of the American National Bank.
Q. Do you remember the incident of the American National Bank going out of business and Mr. Kimball having something to do with their assets as Trustee? A. In a general way.
Q. When at all, did you first have anything to do with these assets? A. In the spring of 1897.
Q. Do you remember the date? A. No I do not exactly.
Q. Do you remember the fact of Mr. Henry F. Wyman acting there as Assistant to Mr. Kimball? A. I do.
Q. You may state when you commenced in reference to Mr. Wyman quitting?
A. As far as I remember I think it was in April 1897, but of that I am not exactly sure.
Q. Well had Mr. Wyman quit the place?
A. I think he had, yes sir.
Q. What were your general duties after you became connected with the assets, as Assistant to Mr. Kimball?
305 A. In looking after the assets and trying to collect them under his direction.
Q. How much of your time was devoted to that?
A. Nearly all of my time.
Q. And how long did that continue?
A. From that time until the time of his death.
Q. And then were you appointed by the court?

A. About two months afterwards.

Q. Have you a list of those assets that Mr. Kimball held at his death? A. I have.

Q. Have you it with you? A. I have.

Q. Will you let me see— (Hands paper to counsel)

Q. When you first became connected as bookkeeper or assistant to Mr. Kimball, in connection with these assets, where were the assets kept, I mean the assets of the American National Bank? A. They were kept in the vault.

Q. Which vault? A. In the north vault.

Q. The north vault of what?

A. The north vault of the Union National Bank, and in the case got up by Mr. Wyman just for that purpose, the keeping of those assets, under lock and key.

Q. Who had the physical possession of these assets?

Each of the respondents objects as calling for the conclusion of the witness.

A. Mr. Kimball.

Q. And you may state in what manner he had this physical possession of them, just explain how the assets were kept?

306 A. They were kept in a case in that vault, in such shape that they could be got at easily, that is by Mr. Kimball or myself and nobody else.

Q. Were they under lock? A. They were, yes sir.

Q. You may state if they had any connection as to location or situation with the assets of the Union National Bank?

Each of the respondents object as calling for the conclusion of the witness.

A. Well, I suppose they were pretty close to the assets of the Union National, but although they were in the same vault, they did not seem to belong to them.

Q. Well were they in the same vault?

A. I don't know whether they were or not, I don't know whether the Union National kept their assets there or not.

Q. Was this the vault in which the Union National keeps its cash? A. No sir.

Q. You may state the facts, as to the officers of the Union National having any control over your [handlinging] and getting the assets for examination?

Each of the respondents object as calling for a conclusion of the witness and being a conclusion.

A. No I think not.

Q. I will hand you the list which purports to be dated Omaha, October 8th, 1899, as a statement of the condition of the American National Bank of Omaha, from the commencement of liquidation to date, which I will have the reporter mark as Exhibit 30 and ask you what that is?

307 A. It is a statement of the condition of the Bank at that date, October 8th, 1899.

Q. Under whom? A. Under Mr. Kimball.

Q. Who made this statement? A. I did.

Q. From what did you make it?

A. From the records in my possession, books and papers.

Q. What do you say as to this being correct?

A. Well, I think it is correct, but it has been two years since I made it up, but I rather think it is correct.

By Mr. Morsman:

Q. Do you say it was made two years ago?

A. Two years ago, or nearly two years ago, shortly after Mr. Kimball's death.

Mr. Macomber:

Q. Well, to be specific in the matter, what does this statement purport to be as to the period of time that these assets cover, I call your attention to the statement of the paper "State of the condition of the American National Bank of Omaha, from the commencement of liquidation to date". Now does this contain a list of the assets as held by Mr. Kimball when he became Trustee under the contract, if you know?

A. No it does not contain a list of assets that he took hold of at the time of the commencement of liquidation, for the reason that quite a number of those assets had been liquidated but money or other collateral that may have been taken in lieu of those would appear in that statement, either taken as collections or otherwise.

Q. Then [in] contains a statement of the assets that

308 he took at that time as trustee with such changes as his collections would show? A. Yes sir.

Q. You may state to the reporter the number or pages or number of sheets in this statement? A. Six.

Q. And it is typewriting, is it? A. Yes sir.

Q. The reporter may place Exhibit 30 upon each page. Mr. Burness, calling your attention to the first sheet of this Exhibit 30 you may state what that contains?

A. Well, you might call it a balance sheet, showing the liabilities and resources.

Q. Then it is true, is it not, that the head of each page following, shows the nature of the list below? A. Yes sir.

Q. Page two of this Exhibit contains, does it at the head "Loans and Discount"? A. Yes sir.

Q. Then follows a list of Loans & Discounts? A. Yes sir.
Q. Then the next page, what is the meaning of "L & D No. 2"? A. It means a continuation of the Loans & Discount.
Q. The L & D is for Loans & Discounts? A. Yes sir.
Q. And page 4, what does the L & D mean?
A. Loans & Discounts, a continuation of the previous pages.
Q. Then the 5th page at the head contains a statement of stocks, securities, claims, etc., does it? A. Yes sir.
309 Q. And the last page does not appear to be headed, is that Real Estate?
A. That is Real Estate, yes sir.
Q. O yes, it is headed Real Estate. Mr. Burness what is the meaning of this 1st page of this Exhibit 30 under the word "Expenditures", does that mean that those are the amounts that Mr. Kimball has paid out? A. Yes sir.
Q. I will ask you the first entry under the word "Expenditure" which reads as follows: "Liabilities prior to liquidation $22,799.90, what is the meaning of that?
A. That is an item that I don't know very much about, I think Mr. Wyman knows more about it than I do, but if I recollect correctly, it was some item of Bills Receivable of the American National Bank that was given to the Union National Bank and that was still an indebtedness of about $22,000 due them which was afterwards paid. It was handled in some way by a Cashier's check.

By Mr. Morsman:
Q. What do you mean by "due them"? Due the Union National?
A. Due the Union National on account of those Bills; I think the original amount was about $39,000.

Mr. Macomber:
Q. If it was of that nature would it be under "Liabilities prior to liquidation", does that not mean the debt accrued prior?
A. I took that phraseology from a statement of Mr. Wyman's.
Q. But in any event that indicates an amount that
310 Mr. Kimball paid out? A. Yes sir.

The complainant will now offer in evidence Exhibit 30, being the statement of the condition of the American National Bank of Omaha, from the commencement of liquidation to its date. Copy on page 270.

Each of the respondents objects as incompetent, not the best evidence.

Q. Mr. Burness, I will ask you where these assets were between the death of Mr. Kimball on the 8th day of October, 1899, and your appointment as trustee by the court to succeed him?

A. They were in the same place as they were before under my charge.

Q. Have you a statement of the affairs of your trusteeship with you? A. No; I have not.

Q. Have you filed any with the court? A. I have not.

The further taking of testimony under the annexed notice is adjourned until to-morrow morning, Nov. 1, 1901, at 10 o'clock.

Omaha, Nov. 1, 1901. 10:00 A. M.

The further taking of testimony under the annexed notice is resumed pursuant to adjournment the same parties being present as on yesterday, the direct examination of James Burness being continued by Mr. Macomber as follows:

311 Q. Mr. Burness, since you have testified yesterday have you made some additional statements, drawn off some additional statements of the condition of the affairs of the American National Bank? A. Yes sir.

Q. The reporter will mark this as Exhibit 31, which purports to be a statement, Supplemental statement of the condition of The American National Bank, of Omaha, from October 8th, 1899, to and including January 7th, 1900. I will ask you to examine that Exhibit 31, and state what it is?

A. It is a statement of the condition of The American National Bank from October 8, the date of Mr. Kimball's death, to January 7, the day previous to my becoming trustee.

Q. Who did the business or affairs that are stated on this paper? A. I did.

The complainant will offer to introduce Exhibit 31 in evidence. Copy on page [—]

Mr. Morsman:

Q. Mr. Burness, this statement you have produced and marked Exhibit 31, purports to cover transactions between the date of Mr. Kimball's death and the date of your appointment as trustee? A. Yes sir.

Q. And from what source did you get your information to make this supplemental statement, marked Exhibit 31?

A. From the books of the American National Bank.

312 Q. Now, when you speak of it as a statement of the condition of the American National Bank, do you mean it is simply a statement of the condition of the assets which

were turned over to the Union National Bank and which Mr. Kimball was engaged in liquidating?

Complainant objects as the question assumes something not proven, something which the witness has not testified.

A. Well, they were the assets of the American National Bank, but they had not been turned over to the Union National Bank.

Q. How do you know they had not been turned over to the Union National Bank?

A. Well, I know so far as my own knowledge is concerned or since I had charge of them that the Union National never had possession of them.

Q. Well, you mean it is a statement of the condition of the assets or funds which the American National Bank turned over under the contract between the American National Bank and the Union National Bank of December 21, 1895, and which Mr. Kimball had been engaged in liquidating? A. Yes sir.

Q. Now, who made the collections and expenditures or disbursements during the period between October 8, 1899, to and including January 7, 1900?

A. I did; that is, if there are any disbursements there. I do not think, though, there was anything paid out, there may have been, I don't think so, but any collections that were made were made by me personally.

Q. After Mr. Kimball's death and before you were
313 appointed trustee? A. Yes sir.

Q. Why did you do it?

A. Well, I don't know; I don't know by what authority I did it; I had been there previously and simply kept along.

Q. Were you an employe of the Union National Bank?

A. No sir.

Q. You were not? A. No sir.

Q. You say you do not know whether there were any disbursements or not during that period?

A. I don't know whether there were or not; this statement will show.

Q. There are items here under "Total Expenditures as per statement of October 8, 1899, $117,352.77," following that "Since above date to January 8, 1900, on account of real estate, taxes, $77.07", that was disbursement?

A. That would be disbursement or it may have been a matter of bookkeeping; I don't know whether there was any cash paid out for that or simply a matter of book keeping.

Q. You don't know whether there was any cash paid out?

A. I do not know now personally without examining the record.

Q. You are not prepared to say that cash was paid out?
A. I am not prepared to say that was cash paid out.
Q. Another item, "Salaries, $241.93" was that an actual disbursement?
A. That was an actual disbursement, yes sir.
Q. Who made the disbursement?
A. I did after I was appointed trustee.
314 Q. After you was appointed?
A. When I was appointed, I suppose I collected salary between those dates.
Q. To whom did you pay it? A. To myself.
Q. For what services?
A. For services performed between October 8th and January 7th.
Q. Can you explain why you charged this sum of $241.93 on account of salaries paid to yourself to the fund which you had charge of as Trustee instead of charging it up to and requiring it to be paid by the Union National Bank under the contract of December 21, 1895?
A. No; I cannot, I was simply following the precedent that had been established before.

Mr. McCulloch: Q. By whom?
A. [My] Mr. Kimball and Mr. Wyman.

Mr. Morsman: Q. Can you explain why they adopted that practice?

Complainant objects as wholly immaterial unless you are cross-examining as to his competency.
Mr. Morsman. That is what I am doing.

A. No sir.
Q. Had you any instructions from any source with reference to that? A. No sir.

Respondents object as to the introduction of Exhibit 31, being the paper dated January 8, 1900, and entitled Supplemental Statement of the condition of the American Na-
315 tional Bank, of Omaha, from October 8th, 1899, to and including January 7th, 1900, on the ground that it is incompetent and not the best evidence.

Mr. Macomber: Q. Mr. Burness, I will now hand you another paper, marked Exhibit 32, which purports to be a statement of collections and expenditures made by James Burness, Trustee, of the American National Bank, since the date of his appointment (January 8th, 1900) to and including October 31st, 1901, which Exhibit I will hand to you and ask you to state what that is?

A. It is a statement of the collections and expenditures made by me as trustee of the American National Bank since the date of my appointment to and including October 31, 1901.

Q. Since your appointment in this case? A. Yes sir.

Q. What was the date of your appointment?

A. January 8, 1900.

Q. From what did you make this? A. From the records.

Q. And is this a true statement so far as it shows?

A. Yes sir.

Complainant offers in evidence Exhibit 32.

Each of the respondents object to the offer of Exhibit 32, entitled "Statement of Collections and Expenditures made by James Burness, Trustee, of the American National Bank, since the date of his appointment, (January 8th, 1900, to and including October 31st, 1901)" on the ground that it is incompetent and not the best evidence. Copy of Ex. 32 on page 277.

316 Q. Mr. Burness, calling your attention to Exhibit 31, to this entry, "Total Liabilities, January 7, 1900, $367,765.00", what is that?

A. I think that is made up of the capital stock of the American National Bank and the indebtedness to the Union National Bank.

Q. Then what is the total resources made out of, being the same amount?

A. Promissory notes, real estate, and I think that was practically all; I think the stock securities, judgments and claims, etc., the amounts would be charged up to profit and loss as shown by the books.

Q. Then in this same statement I will ask you to explain what you mean by Loans and Discounts, $239.00?

A. It means that $239.00 have been collected from the notes held by me.

Q. And the next entry "Interest & Discounts, $168.85"?

A. That probably is interest collected.

Q. And "Real estate, rents, $734.68"?

A. Rents collected from real estate.

Q. How come you to have rents paid, what did that arise from?

A. There is some property that we were getting rents from, and I suppose that is how it came there; I do not remember now the particular transaction.

Q. Now, this matter of salaries in this statement, of $241.93, is an entry of the amount that you claim to be due you from the death of Mr. Kimball, was it, up to your appointment? A. Up to my appointment, yes sir.

Q. What did you do during that interval towards taking care of the assets?

317 A. Well, I [look] after them and tried to collect what I could, I had the care of them.

Q. You may state who had the actual manual possession of these assets during the interval from the death of Mr. Kimball until your appointment?

Each of the respondents objects as calling for the conclusion of the witness.

A. I did.

Q. And where were they kept during that interval?

A. In the same place as they had been kept before.

Q. By whom? A. By Mr. Kimball.

Q. Mr. Burness, now passing from that statement to the next statement which was marked Exhibit 32, which purports to be the statement that you made of your doings since your appointment, I will call your attention to the entry, "Loans and discounts, $22,284.17", and ask you to explain that item, how that is made up?

Each of the respondents objects as incompetent and not the best evidence.

A. It is made up of part cash collected from the notes held and the balance charged off to profit and loss.

Q. You may explain how that is made up, from what it is made up?

Each of the respondents objects as incompetent and not the best evidence.

Q. That is, your method by which you would arrive at that amount, just give your method of your collections and what your entries would be and under what heads?

Each of the respondents objects as incompetent and not the best evidence.

318 A. A great many of the notes that were held were compromised, and the best settlement made with the parties that I thought possible to be made; now, it may be that part cash was paid for the notes and the balance charged to [prifit] & Loss. The face of the note would be credited to loans and discounts, and then on the other entry the cash would be credited up and the balance would be charged to profit and loss so that entry there in loans and discounts amounts to the face of the notes, but it does not show actual cash having been collected for them; there is quite a number of compromises and settlements made with different parties that were going to

take advantage of the bankrupt law and could not pay and would not pay, and we thought it was best to take what we could get out of them. I think that was done by the order of the court in most instances.

Q. Will this statement show the amount of cash that you received from that item?

A. From the loans and discounts?

Q. Yes sir.

A. No; it would not; it would show what the total amount of the collections have been, or adjustments, and the disbursements. By checking the books you could find out; in settling the note that way, of course it is a matter of book keeping.

Q. Is there any statement in this exhibit that shows the actual cash that has been collected during the period covered by this? A. No sir; not actual cash.

Q. But what is the fact about the items showing payments by you and the amount of cash on hand, showing the actual cash that was handled?

319 Each of the respondents object as incompetent, and not the best evidence.

A. The items in disbursements, a good many of them of course, would be cash paid out, but a great many of the others would simply be debit and credit, and the cash on hand, I have got that in the Union National, or at least I think it is, according to the balance book.

Q. How much cash on hand have you at the present time?

A. I think about $3900 if I remember.

Q. Will this statement show? A. Yes sir.

Q. Please indicate to us where it would show?

A. It shows there, $3977.72.

Q. That is the entry, cash on hand, October 31, 1901?

A. Yes sir.

Q. How much cash was on hand at the time you took possession as trustee?

A. In the neighborhood I think, of $3,000.

Q. Will this statement show? A. Yes, $3,041.83.

Q. How much cash have you paid on the three notes?

A. $19,000.

Q. You may state, Mr. Burness, the fact as to whether the the $19,000 paid on the notes and the $3977.72 represented all the cash that has come into your hands except such as you have paid out on expense and expenditures, etc.?

Each of the respondents object as incompetent, not the best evidence, calling for the conclusion of the witness.

320 A. Yes sir.

Cross-Examination

By Mr. Morsman:

Q. In this statement marked Exhibit "30", bearing date October 8, 1899, entitled "Statement of the condition of the American National Bank, of Omaha, from the commencement of liquidation to date", containing six pages, that you say, was made up by you from the books and papers which you found after Mr. Kimball's death? A. Yes sir.

Q. And it was intended by you to cover his transactions while he was engaged in liquidating the assets of the American National Bank? A. Yes sir.

Q. Now, I wish you would give us the items showing how you obtained the item under the heading of Expenditures, called "Liabilities prior to liquidation, "$22,799.90", give us the items?

A. I do not believe I have got those items here. That item was taken from a statement that Mr. Wyman had made and I presume it was correct.

Q. But you do not know whether it was correct?

A. I do not.

Q. You did not verify the statement?

A. I did not verify that part of the statement.

Q. To whom did you make the statement?

A. Mr. Wyman.

Q. Was it simply a paper you found among the assets and you do not know anything about the correctness of it?

A. I do not know anything about the correctness of it nor how that amount was arrived at.

321 Q. Do you know anything about the items composing the item under the heading of Expenditures on the first page of this Exhibit, called "Expenses prior to liquidation, $4,985.99"? A. No sir.

Q. Where did you obtain your information from which you made that item, $4,985.99?

A. From a statement Mr. Wyman made previously.

Q. Are you in possession of the statement made by Mr. Wyman covering that item? A. No sir.

Q. What did you do with it?

A. It is with the records over there at the bank.

Q. When you say it is not in your possession you mean you have not it here? A. I have not it here.

Q. Was that statement from which you obtained the item "Liabilities prior to liquidation, $22,799.90"? A. Yes sir.

Q. Then you have that statement?

A. I have not it here; I think it must be in the bank.

Q. And you say you do not know anything about the correctness of it?

A. I do not know anything about the correctness of it, of course.

Q. From what source did you obtain the facts in this statement, Exhibit "30" found on page one, under the heading of Expenditures, and called "Expenses, Salaries, $4,669.96"?

A. That I think would be taken from the books, I suppose.

322 Q. But did you take it from the books?

A. I rather think I did. I do not know whether I took it all from the books or part from Mr. Wyman's statement, and from the time I commenced and from that time on.

Q. Do you understand and mean to be understood as making this statement to show that item of $4,639.96 as having been expended on account of salaries in the liquidation of the assets by Mr. Kimball? A. I rather think so.

Q. Can you give an explanation why that was not paid by the Union National Bank under the contract between that Bank and the American National Bank? A. No sir.

Q. What is the item of attorneys' fees, $2,114.93, on page one of this Exhibit 30, composed of?

A. I suppose it was fees paid to atorneys for conducting different cases.

Q. Do you know anything about it?

A. I may know about part of it, but I question if I know about it all.

Q. Do you know to whom it was paid, for what services?

A. No sir.

Q. The item under the same heading on the same page, "Court Costs, $678.04", what is that composed of?

A. It is composed of costs paid in cases that were in litigation.

Q. How do you know that? A. From the books.

Q. You have no personal knowledge about it?

A. Excepting in part.

323 Q. What part have you knowledge of?

A. I have knowledge from the time I commenced with Mr. Kimball, in 1897, down to that date.

Q. From the time you were employed by Mr. Kimball?

A. In the bank, yes sir.

Q. Were you employed by Mr. Kimball to assist him in the liquidation of the assets, or by the bank?

A. By Mr. Kimball.

Q. And you were not employed by the Union National Bank at all? A. No sir.

Q. What were you doing after you were employed by Mr. Kimball, anything at all but assisting in liquidating these assets?

A. That was all, and attending to some of his private business.

Q. Then the item of Expenses, Salaries, $4,639.96, includes your salary for serving him in liquidating these assets?

A. Yes sir, in part.

Q. And you suppose it also to include salaries paid by him to other persons, do you, for assisting him in liquidating the assets? A. Yes sir.

Q. So that whole sum of $4,639.96 paid on account of salaries you understand to be a sum paid by him for assistance in liquidating the assets? A. Yes sir.

Q. Well, now what is the item on the same page of Exhibit 30, called "Advertising, printing and postage, $544.17" composed of?

324 A. Advertising the meetings, and I think it was advertising some chattels the bank had, and the general conduct of its business.

Q. Which bank had? A. The American National.

Q. And you mean chattels that were turned over by the American National Bank under the contract of December 21, 1895?

A. By some parties that were indebted to the bank.

Q. Turned over to Mr. Kimball?

A. Turned over to Mr. Kimball, that of course, I could not say without verifying the books to see just what it was composed of.

Q. And the item of "Sundries, $89.98", what do you mean by sundries there?

A. Well I suppose that is charged to an account that we could not get it in any place else; I do not know what it was composed of; it may be recording deeds, I do not know just what it is composed of.

Q. You mean it was sundry expenses incurred by Mr. Kimball in the liquidation of these assets? A. Yes sir.

Q. So far as you know, then, from the time that Mr. Kimball commenced the liquidation of these assets, all expenses incurred were charged against the assets or the fund?

A. Yes sir.

Q. Now, passing to the statement marked Exhibit 31, dated January 8, 1900, the item of salaries in that statement, $241.93, I believe you say is to cover your salary during the period from October 9, 1899, the date of Mr. Kimball's death, to and including January 7, 1900, when you were appointed trustee?

A. Yes sir.

325 Q. During that time you collected the sum of $1,142.53 did you?

A. Whatever the statement shows there; it may, of course be some book keeping in connection with it. Yes, that is right.

Q. That is the total amount collected? A. Yes sir.

Q. And what other service did you perform during that time?

A. I do not know that I performed any other service than try to collect assets.

Q. At what rate per month is your salary computed?

A. $75,00.

Q. $75.00 per month? A. Yes sir.

Q. What else were you doing during that period?

A. Just attending to the assets that were held by Mr. Kimball.

Q. And nothing else? A. Nothing else, no sir.

Q. Not attending to Mr. Kimball's private business or relating to his estate? A. Very little during that time.

Q. During the time preceding his death what rate was your salary charged against this fund? A. $50 a month.

Q. And is that the whole salary you were receiving?

A. No sir.

Q. You were receiving other salary from him?

A. Yes sir.

326 Q. Well, why was your salary charged at $75. per month during the period after his death and before you were appointed trustee?

A. I don't know, I think probably I thought it was worth it.

Q. You thought it was worth it? A. Yes sir.

Q. And you fixed your own salary? A. Yes sir.

Q. And charged against this fund? A. Yes sir.

Q. Did you have any consultation with anybody about it at all? A. No sir.

Q. Well you understood that you did not have any authority at all after Mr. Kimball's death, did you not?

A. Yes sir.

Q. Now, turning to statement marked Exhibit 32, and purporting to be a statement of your own transactions from January 8, 1900, to and including October 31, 1901, why did you [you] bring that statement down to the present date?

A. I think it is down to the present date, October 31st.

Q. O, yes, it includes that. Explain the item under the head of "Collections" in this statement marked Exhibit 32, called "Loans & Discounts, $22,284.17", you say that was not all cash?

A. No sir, that is, it was not all collected in cash that would be the face of the notes.

Q. Then you credited as collected the face amount of the notes which you disposed of? A. Yes sir.

327 Q. Whether you collected the whole amount or not?

A. Yes sir.

Q. And you charged as disbursements or expenditures the amount that you disbursed in cash and charged to profit and loss the amount of the notes lost in compromise or settlement?

A. Yes sir.

Q. Did you charge to profit and loss any notes upon which nothing was collected? A. Yes sir.

Q. What amount of those notes?

A. Well, you would have to figure them out; you can't tell from that.

Q. You can explain in a general way what they were?

A. Those notes, the parties who had taken advantage of the bankrupt act—of course the notes were no good and we took them out of the loans and discounts account and put them in the Profit and Loss, and the loans and discount account would have to get credit for that much.

Q. The item of "Interest and Discounts, $3,728.73" under the head of collections, that was received in cash, was it?

A. No sir; there was a large part of that—I think a Curtis note, S. S. Curtis, and Sackett, which was held in the Loans and Discounts but which was afterwards taken out and a judgment secured against them and the interest was added up and the interest credited to the interest account, and the notes credited to loans and discounts, and afterwards put in the judgment account, or stocks, securities and claims, etc., as they call it—simply taken out of one account and put in another, and the interest that was figured up to get the judgment was credited to the interest and discounts.

Q. This statement marked Exhibit 32 under the heading of collections, total, $57,814.06, does not show in fact the
328 collections actually made at all?

A. That is in cash, no sir; it does according to the books or the adjustment of the accounts, you might call it.

Q. But where you charged a note off of the accounts entirely or out of your Loans and Discounts account you carried it into this statement under the head of collections?

A. Yes; that is the way it was done.

Q. The item of "Real Estate, account rents", under the head of collections, "$971.25" was that all cash?

A. That was all cash.

Q. And "Real Estate, act. sales, $10,980.47", was that all cash? A. That was all cash.

Q. And "Real Estate, act. taxes rebated, $138.53" was that all cash? A. That was all cash, yes sir.

Q. "Stocks, securities, claims, etc., $15,669.08", was that cash? A. Very little of that was cash.

Q. Then as a matter of fact, instead of collecting that sum on account of stocks, securities, claims &c., you merely charged it out of the accounts as if it was a loss?

A. Yes; it is a loss in fact, most of it, I think.

Q. What does this item mean, "Received on account of 10 shares of stock of American National Bank, held by the late Thomas L. Kimball, $1,000"?

A. That is $1,000 I got for that liability.

Q. Then you collected from the estate of Mr. Kimball $1,000 on account of his supposed stockholders' liability as a stockholder in the American National Bank?

329 A. Well, I do not remember where I got that check, whether I got it from Mr. Kimball or who.

Q. Did you receive it in cash? A. I think I did.

Q. Do you know whether you did or not?

A. By examining the books I would, but now I don't remember.

Q. What did you do with it, when you got it?

A. I think I paid it to the Union National.

Q. You paid it to the Union National Bank? A. Yes sir.

Q. Who gave you the check? A. I do not remember.

Q. To what person did you pay it in paying it to the Union National Bank?

A. I either paid it to Mr. Thomas or Mr. Wattles, I do not remember which.

Q. When did you pay it to the Union National Bank?

A. I have not got the date, just what date it was; it was about the same time it was received.

Q. The same time that you received it?

A. About the same time I received it.

Q. On which of the three notes did you have it credited?

A. Well, I do not remember that either.

Q. Did you have it credited on either of the three notes?

A. Yes sir. I think it was credited on one of the three notes or it may have been divided up.

Q. Can you tell by examining the notes?

A. I think so.

330 Q. You may look at these notes and see if you can tell?

A. I do not know whether it is on either one of those notes.

Q. You mean you do not know whether it is credited on either one of the notes? A. No sir.

Q. You are examining the notes now, are you?

A. Yes sir.

Q. And you cannot find any credit of that sum of $1,000 on either or all of the three notes?

A. Not from the endorsement on the back.

Q. Did you receive the check for that $1,000 from Mr. Kimball as Executor or administrator?

A. I do not know from whom I received it.

Q. Whose check was it? A. That I cannot remember.

Q. Where did you receive it? A. In the bank.
Q. And you cannot remember the date of it?
A. I think it was sometime in the early part of 1900; now, I don't remember the date, no sir.
Q. Can you tell from any books or records you have whose check it was? A. No sir.
Q. Or who handed it to you? A. No sir.
Q. Did you say it was paid by Mr. Kimball's estate?
A. No sir.
Q. Do you know who did pay it?
A. I do not remember now who paid it.
331 Q. Do not you know, Mr. Burness, that it was a mere rebate by the Union National to Mr. Kimball's estate? A. I do not.
Q. Have you any means of ascertaining by whom the check was drawn?
A. I do not know whether I have or not; I do not know whether I could trace it down; I probably could, but personally I do not remember.
Q. You are familiar with the books of the Union National Bank, are you not? A. No sir.
Q. You do not have anything to do with them?
A. Not with the books, no sir.
Q. You perform clerical duties there, do you not.
A. Yes sir.
Q. What kind of duties?
A. Draft clerk, you might call it.
Q. How long have you been doing that?
A. About two months I should think.
Q. Not longer than that?
A. May be three. Now and again, sometimes the boys get a lay off, sick or off on a vacation, and I help them out.
Q. What kind of clerical work did you perform prior to three months ago? A. The same.
Q. I understood you to say you had not been doing that kind of clerical work more than about three months, how long have you been performing clerical work in the Union National Bank?
A. Well, at different times, but not very long; this
332 is the longest time that I have been doing it, that is now.
Q. But at different times since Mr. Kimball employed you, you have been performing clerical work for the Union National Bank? A. Yes sir.
Q. And who paid you for those services?
A. The American National Bank.
Q. The American National Bank?
A. Yes, it is included in that statement.

Q. That is, you mean it was paid out of the funds turned over by the American National Bank under the contract of December 21, 1895? A. Yes sir.

Q. Well, Mr. Burness, in this statement marked Exhibit 32, covering your own transactions as trustee, you have paid the Union National Bank $19,000, when was that paid?

A. At different periods.

Q. On which of the notes was it credited?

A. Well I do not remember that; what they call the second and the third note, I rather think.

Q. The second and third note?

A. I do not know, though; the Union National Bank, of course attended to that themselves, I did not pay much attention.

Q. Why did you pay it to the Union National Bank?

A. Under the contract between the American National Bank and the Union National Bank.

Q. Why did not you pay it on the note held by the plaintiff in this case, Mr. Wallace? A. I do not know.

333 Q. You do not know? A. No sir.

Q. To whom did you pay it?

A. To the Union National Bank.

Q. To what person, I mean?

A. Either Mr. Thomas the cashier, or Mr. Wattles.

Q. Mr. Wattles is the President? A. Yes sir.

Q. You paid it to them under the instructions of Mr. Wattles? A. No sir.

Q. Under whose instructions?

A. Not any one's instructions.

Q. Of your own motion? A. Of my own motion.

Q. But you cannot explain why you did not pay it to Mr. Wallace on the first of the three notes? A. No sir.

Q. The next item under the head of Expenditures is Real Estate account taxes, $834.35, what was that paid on?

A. It was paid by check.

Q. What was it paid on?

A. On different pieces of property.

Q. Can you describe them?

A. No, not without looking at the books.

Q. What years taxes?

A. Probably several years, a good part of it was on this Gas farm over in Dalles County, Iowa, part of it there and different other pieces of property.

Q. Is there anything in that item excepting actual taxes?

A. No sir.

Q. How much did you pay on what you call the Gas Farm in Dalles County, Iowa?

334 A. I do not remember now just how much.

Q. Was that farm sold? A. It was sold, yes sir.
Q. To whom was it sold?
A. It was sold to a party by the name of McClure.
Q. For how much? A. About $12,800 I think.
Q. Cash?
A. Cash; there was a mortgage of $5,000 against it.
Q. Did you receive $12,800 cash? A. No sir.
Q. You received that less the amount of the mortgage?
A. Less the amount of the mortgage and interest.
Q. The purchaser assumed that mortgage did he?
A. I think he did, yes sir.
Q. How much cash did you receive from him?
A. I think it was about $7,500.00.
Q. $7,500.00? A. Yes sir.
Q. What is this item paid J. E. Markel, his proportion of rents collected from Waterloo property, $324.27?
A. He owned a half interest in the property which was near Waterloo, Nebraska, and Mr. Robinson out there acted as agent, and collected the rents; they rented a small place there and he remitted the whole amount to either Mr. Kimball or myself and we had to reimburse Mr. Markel, that is pay him one-half. He stood half the expense and got half the proceeds.
Q. What is the item of attorneys fees $375 expended by you?
A. I think there was $100 of that went to W. H.
335 Thompson and the balance to Mr. Blackburn.
Q. Well you had Mr. Blackburn's note, did you not?
A. Yes sir.
Q. Was it applied on that note?
A. Yes sir, the one offset the other.
Q. Then is that $275.00 carried into your cash collections?
A. In the loans and discounts.
Q. What was the service performed by Blackburn?
A. Well, we had several cases in hand, Mr. Kimball agreed to give him several cases, simply to wipe that out, I forget the cases now.
Q. And you do not know anything about what service he performed?
A. I do not recollect now, I think he had one or two suits for the bank [sueing] some party.
Q. Or the value of the services, do you know anything about that? A. No sir.
Q. You do not know anything about that at all?
A. No sir.
Q. And never tried to find out what his services were?

A. No I don't believe I did. It was a matter that was handled more by Mr. Kimball, it came down from Mr. Kimball to me.

Q. Had the cases been concluded? A. Yes sir.

Q. Can you tell what any of the cases were?

A. I think one of them was a suit against Cooley and his wife for a note and we afterwards got a judgment.

Q. Against Judge Cooley? A. No sir, not Judge Cooley.

Q. What Cooley? A. A. H. Cooley.

336 Q. And you got judgment on that note?

A. Yes sir.

Q. What amount did you get judgment for?

A. Well, I don't recollect the amount now, I think it was a pretty large sum, I probably could tell—it seems to me it was six or seven thousand dollars.

Q. Did you collect anything? A. No sir.

Mr. Macomber: Q. He has suggested Walworth, see if you remember anything about that?

A. Yes there was another case, C. H. Walworth.

Mr. Morsman: Q. Was that a suit on a note?

A. It was a suit that was started by Mr. Blackburn and it was afterwards compromised.

Q. By you between Mr. Blackburn and Walworth?

A. Between Mr. Blackburn and myself under the order of the court.

Q. How much did you get in the compromise?

A. About $200, if I remember.

Q. What other case was there?

A. I don't know whether there was any more or not, I rather think they were but small matters compared with those two, I do not recollect just now.

Q. And in fact you paid Blackburn for fees about all that he collected, did you not? A. Yes sir.

Q. What is this item under the [hear] of "Expenditures settlement of Steinberg case $500?

337 A. That was a case in which we had a judgment against Steinberg and others, and we commenced to levy on their goods and found out that Steinberg was not the real owner, or at least they stated that the wife was the real owner and they threatened to sue us for damages and we came to the conclusion, I think the Court authorized it, that we had better settle it ourselves.

Q. And you paid out $500 in settlement of that?

A. Yes sir.

Q. That then really was expenses incurred in liquidating these assets? A. Yes sir.

Q. Why was not that charged to the Union National Bank?
A. I don't know that it would be expense; I suppose it was.
Q. You have frequently examined since you became Trustee, the contract between the Union National Bank and the American National Bank of December 21, 1895?
A. I think I have read it over.
Q. You know, do you not, that provided the Union National should liquidate these assets without expense to the American National excepting attorneys fees and court costs?

Complainant objects as incompetent and immaterial on the ground that after this case was commenced the liquidation was not proceeded under the contract.

A. I rather think the contract provides for that but I do not just remember.
Q. Then why and under whose instructions do you charge this expense in the settlement of the Steinberg case $500 against this fund? Why do you do that?
338 A. I do not know, simply following the footsteps of Mr. Kimball, everything was charged up against that fund.
Q. You did not consult with anybody? A. No sir.
Q. Who did you consult with to reach the determination that it was best to pay the $500 in settlement?
A. I think I consulted with Mr. Wattles in that case.
Q. What did he tell you about paying it out of the funds in your hands and charging it up to this fund?

Complainant objects as not proper cross-examination. This is a matter of bookkeeping and if what the respondents claim that these matters should be paid by the Union National Bank, it is a matter of settlement between the parties as to the amount that is due upon the note.

A. Nothing.
Q. Why did you consult him about it?
A. Well, I thought that he was vitally interested in the assets and ought to be consulted about it.
Q. You knew from your examination of the contract between the two banks that the contract provided for the transfer of the assets of the American National Bank to the Union National Bank, did you not? A. No sir.
Q. Well this item of advertising, postage, etc., $27.40, that is a part of the expense you incurred in liquidating the assets since your appointment as Trustee? A. Yes sir.
Q. And the same is true of the item "Sundries, In-
339 surance, Abstracts, Commissions, etc., $172.43"?
A. Yes sir.

Q. And the item of the Salary of Trustee, $1,633.25 that is your own salary? A. Yes sir.

Q. And who fixed that salary? A. I fixed it myself.

Q. How much did you fix it at? A. $75.00 a month.

Q. And have you been receiving any other salary from any other person? A. No sir.

Q. So that for that salary of $75.00 a month you were serving in your capacity, as Trustee, so called, and also performing Clerical work for the Union National Bank?

A. Well temporarily.

Q. But at different times? A. At different times.

Q. And about how frequently?

A. Well not so very frequently.

Q. Some times three or four months at a time?

A. No sir, about now the clerks at the Union National have been taking their vacations.

Q. How many clerks have been taking their vacations?

A. All of them.

Q. Did you take the place of all them?

A. Well, one at a time.

Q. Well now, under the head of Expenditures, you have stocks, securities, claims, etc., $7,979.90, what is that item composed of?

340 A. That I think is composed mostly of that Curtis note, that has been credited to loans and discounts, and charged to stocks, securities, claims, etc; that is put into the judgment account, simply carrying it from one account to another, that is all.

Q. That was not cash paid out by you? A. No sir.

Q. But you credited it out of the account entitled "Stocks, Securities, Claims, etc" and what account did you charge it into?

A. I credited it out of loans and discounts and charged it to the stocks, securities, claims, etc.

Q. And you opened an account called, or did you have an account called "Stocks, Securities, Claims, etc."?

A. Yes, I had that account.

Q. And you merely transferred it from one account to the other? A. Yes sir.

Q. What was the item composed of, making $7,979.90?

A. I will have to examine it to say what that would be.

Q. You think it is mostly the Curtis note?

A. I think so.

Q. What was to be gained by crediting that out of Loans & Discount and charging it to stocks, securities, claims, etc.?

A. Nothing at all.

Q. Why did you do it?

A. Simply to conform to the book-keeping of the books.

Q. You are speaking now of the books you were keeping?

A. That is what I refer to.

341 Q. Why did you credit the notes of S. S. Curtis out of the account of Loans & Discounts, and charge it into an account called "Stocks, Securities, Claims, etc"?

Complainant objects as already having been answered.

A. Because at that time they were held as notes and chargeable to the Loans & Discount account. Since then they were put into judgment and the Loans & Discount were credited with the face of the notes and the Stocks, Securities, Claims, etc., were charged with the face of the notes plus the interest.

Q. Then by crediting out of the account called loans and discount and charging it into the account called Stocks, Securities, Claims, etc., you make a gain equal to the amount of the interest so far as your book keeping is concerned.

A. Yes sir.

Q. What did you do with that gain?

A. The interest and discount account got credited with that and the stock, securities, claims, etc., account is charged with it.

Q. You have been trying hard to earn your salary to go through with such a performance as that. When you charged it into the Stocks, Securities, Claims, etc., account you still had the asset? A. Yes sir.

Q. And you reported it here to the court or in your testimony here as being an Expenditure, why did you do that?

A. That is a matter of book keeping that is all.

Q. You did not have anything else to do did you?

A. Well sometimes a good deal.

Q. Tell us what you did that for.

342 A. It was the way the accounts were started before I came up there, and I thought I would keep them about the same way.

Q. How much did you credit to interest and discounts on account of that judgment, which you say was credited on the S. S. Curtis notes and which you carried into the account called Stocks, Securities, Claims, etc.?

A. I could not tell without looking up what was the face of the notes and interest calculated at that time.

Q. The whole thing is [ficticious] entry is it not?

A. No sir.

Q. Still you cannot explain what it was done for?

Complainant objects for the reason that he has already explained it two or three different times, changed the security from one account to the other.

A. Well, I cannot explain it any farther than what I have done.

Q. Well, the Walworth judgment was not collected was it?

A. We never had a judgment against Walworth.

Q. You did not obtain a judgment against Walworth?

A. No sir.

Q. You had a suit against him?

A. The suit I think was commenced if I remember rightly.

Q. What disposition was made of the case?

A. Disposed of.

Q. Well, how?

A. I don't remember; it was simply disposed of; we
343 got an order of the court to compromise the claim; it was compromised and the suit dismissed.

Q. You compromised it? A. Yes sir.

Q. So that is the way it was disposed of? A. Yes sir.

Q. Now did you compromise it?

A. On the payment of $300.

Q. What was the amount of the claim?

A. About $3,000 if I remember rightly.

Q. So that asset, whatever it amounted to, was wiped out by the compromise? A. Yes, sir.

Q. This item under the head of Expenditures, "Profit and Loss, $21,040.47", what is that composed of?

A. That is the difference between the amounts received in the settlement of those claims and the balance of the face of the notes.

Q. That is you would charge to Profit and Loss the amount which you failed or found it impossible to collect in making these settlements? A. Yes sir.

Q. Can you give us the items which composed this $21,040.47? A. Not without getting at the books.

Q. Is it all the result of losses by compromise?

A. No sir.

Q. What else is there in it?

A. Well, one account, a real estate account might have a charge against it, and the credit might be enough to offset; after the real estate was disposed of the balance standing to that account would be charged up to Profit and Loss.

344 The further taking of testimony is now adjourned until 2 o'clock P. M.

Omaha, November 1, 190 , 2 P. M.

The same parties being present the Cross-Examination of Mr. Burness is continued by Mr. Morsman, as follows:

Q. Mr. Burness, in this statement which is marked Exhibit 32, that is the statement purporting to cover your own trans-

actions as Trustee, you have under the heading of Expenditures an item designated as "Charged Loans and Discounts, $1750.00, what is that item?

A. The explanation of that, that is the Waterloo property, as we called it, belonging to Markel and the Bank, that was sold sometime ago and the bank and Markel took notes from the purchaser and the real estate was credited with that amount, and the loans and discounts charged with it, so that amount now stands in the Loans and Discounts as notes instead of as real estate as before.

Q. Then it has come into your hands as notes since you became Trustee? A. Yes sir.

Q. In lieu of the real estate? A. Yes sir.

Q. What disposition has been made of those notes?

A. I have got them in my possession.

Q. I suppose they are good notes, are they?

A. O, yes, they are good notes, one of them is due here—no, they do not become due until the first of the year. Yes, I think the notes are good, Mr. Robinson was in the other day and explained the corn crop had not been very good but
345 he thought the parties could raise the money to meet them.

Q. Then when that real estate was sold the real estate account was credited with the proceeds? A. Yes sir.

Q. And in this statement you carried that amount into the column under the heading Collections? A. Yes sir.

Q. What was the amount? A. I think $1750.00.

Q. Even $1750.00?

A. Yes, that is our proportion; we have notes for that amount, and Mr. Markel has similar notes.

Q. And you did not get any cash?

A. We got $100 cash, $5.00—$100.00 cash and $1750 in notes; that is my recollection of it.

Q. I notice that in making up this statement under the heading of Expenditures you have not got all of the items which I see in your expense account, or at least I think you have not, now what method did you resort to in making up this statement in order to get these totals?

A. Well, I think I went over the cash book and picked the different items that belonged to the different accounts out, for instance in the salary account which is charged to the expense account I would have to take out of the balance of the expenses.

Q. Well, but how can we know, and how can you explain that some item of expense contained in your expense account is not, for example, in this item of Stocks, Securities, Claims, &c.? A. That is a different account.

346 Q. And is the balance of that account as shown on the books $7979.90?

A. I do not know exactly what the balance shows; I have not looked to see the balance of it.

Q. You may look and see.

A. The Ledger simply shows the total balance.

Q. Well, this item, Stocks, Securities, Claims, &c., $7,979.90, that is not any disbursement or expenditure by you?

A. No sir; that is simply book keeping; that is all a matter of book keeping.

Q. And why have you not made an itemized statement of your receipts and disbursements showing the source of the receipts and the reasons for the disbursements?

A. Well, I could do that, but I have not done it, giving an itemized statement.

Q. Can you tell by looking at this statement marked Exhibit 32, the amount of cash you have received?

A. No sir, I could not.

Q. You cannot tell the amount of cash you have disbursed, can you? A. No sir.

Q. Nor the source from which you have received cash nor the reasons for any disbursements?

A. Not, from that statement—I can from the books.

Mr. Morsman: Well, Judge, if he will make me an itemized statement showing the sources of receipts and the reasons for disbursements it will save a good deal of time; otherwise I will have to go right through the books.

347 Mr. Burness: It will take a good deal of time to do that; it will be practically a copy of the cash book.

JAMES BURNESS.

By agreement of the parties the further taking of testimony under the annexed notice is adjourned until 10 o'clock on Friday morning, November 8, 1901.

Omaha, November 8th, 1901. 10 o'clock A. M. The same parties being present as at the last hearing, the taking of Depositions under the annexed notice is resumed pursuant to adjournment.

James Burness called for re-direct examination by Mr. Macomber.

Q. Mr. Burness, since you were excused the other day as a witness, have you prepared a statement as requested?

A. I have.

Q. I will hand you Exhibit 33, being the statement referred to by you and will ask you to state, how many pages there are? A. Twenty pages.

Q. Including or excluding the first page?

A. Including the first page.

Q. From what did you make this statement?

348 A. From the books and records of the American National Bank.

Q. How long did it take? A. About a week.

Q. I will ask you if the statement here is a true statement as you take it from the books in your hands as Trustee?

A. It is.

Q. You may state from what period it commences and at what period it ends?

A. It commences December 23, 1895 and ends October 31, 1901, including both days.

Q. What do you say as to the statements in this being true?

A. They are true as far as I know from my own personal knowledge.

A. And what do you say of those that are not of your own personal knowledge being correct as being taken from the books in your possession? A. Well, I think they are correct.

Q. Mr. Burness you may state generally, commencing with the first page, what the Exhibit shows?

A. The second page of the Exhibit shows the cash collections from December 23, 1895 to and including October 31, 1901.

Q. Cash collections of what?

A. Of the assets of the American National Bank. The third page shows part of the disbursements, from December 23, 1895 to and including October 31, 1901; the fourth page is a continuation of that statement and gives the total disbursements $127,744.72; the next page, page five shows the payments through the Union National Bank either on account of principal or interest; page six shows fees paid to at-

349 torneys; page seven, shows payments of interest.

Q. Interest on what?

A. Mostly on real estate and dues, and interest to the Bankers Building and Loan Association.

Q. That is, on obligations not to the Union National Bank or on assets?

A. On obligations not to the Union National Bank except one item here that has been paid to the Union National Bank that amounts to $329.58. Pages eight, nine, ten and eleven, is a detailed statement of taxes paid on different properties.

Q. Whose properties?

A. Belonging to the American National Bank, both in Douglas County and outside of it. Commencing at page twelve, thirteen, fourteen, fifteen, sixteen and seventeen are charges made to Expense Account, for Salaries, Rents, Court costs and Sundry other items. Page eighteen shows the changes since October 8th, 1899, of the Loans & Discounts account, that is in compromising notes, payments that have been made on notes and notes that have been charged off to Profit & Loss on account of the parties taking adyantage of the Bankruptcy Act. The total of this account should now read $185,134.23. Page nineteen is a [ststement] of the "Stocks, Securities, Claims, etc., showing the stocks disposed of, Bonds sold, judgments paid or compromised or wiped out by parties taking advantage of the Bankrupt Act. The total of this account October 31, 1901, is $42,338.49. Page twenty shows the alterations and additions to the Real Estate account. I think that is all.

Q. Does this statement show an account of the assets now on hand, taking it all together?

350 A. With the statement of October 8th, Exhibit No. 30, it does.

Q. This shows the changes in the assets since the date of Exhibit 30? A. Yes sir.

Q. Which you referred to as October 8th, 1899?

A. Yes sir.

Complainant now offers in evidence Exhibit 33, which appears on page 278 hereof.

Q. Mr. Burness, you may state what effort you have made to realize on those assets?

A. I have run around a good deal trying to collect the assets, but as shown on the statement I have not been very successful and I think if the character of the assets were a little better the probabilities are I would have been able to have got more out of them.

Q. Have you made yourself familiar with the assets as to what they are? A. Yes sir.

Q. And the possibility of converting them into money?

A. Yes sir.

Q. And you have also examined into the financial standing of the parties behind those assets, that is the makers of them.

A. Well as far as I could.

Q. And what do you say as to having collected all that you could from them?

A. You mean those that have been collected?

Q. That is the assets?

A. I think I have got all I possibly could.

351 Q. What do you say as to the general character of the assets outside of the real estate, of the collectibility of them since you have had them at this time?

A. My opinion—I don't know whether it is worth very much—I do not consider them worth a great deal, in fact the first time I saw them I was a little surprised at the stuff they had there, I considered them practically worthless, and have so found it in my efforts to collect them.

Q. What do you say as to endeavoring in good faith and diligence to realize on these assets during the time you have had them in your charge?

Each of the respondents object as calling for a conclusion of the witness.

A. I have used due diligence in trying to collect them in every way I could.

Q. Do you recollect about how many suits are now pending against parties on these obligations?

A. No, I do not recollect, they are several I think on hand now, I don't remember just how many.

Q. What condition are the assets in as to being kept alive, that is not barred by the Statute of Limitations?

A. Well, quite a number of them are just about running out I think, and several of them are in suit now to keep them alive, suit has been started on them.

Q. You may state what in your opinion, your services are worth as Trustee, for the purpose of collecting these accounts?

Each of the respondents object as immaterial.

A. I think they would be worth at least $75.00 a month.

Recross-Examination

352 By Mr. Morsman:

Q. The total sum on page 2 of this Exhibit 33, under the heading of "Statement of Cash collected, cash collections from commencement of liquidation December 23, 1895, to and including October 31, 1901" shows $127,744.15, was that the total amount of cash collected? A. Yes sir.

Q. From all sources?

A. From all sources outside of the small balance I entered in to make it agree.

Q. $14.72? A. Yes sir.

Q. Then the total sum collected would be, $14.72 less than $127,744.15? A. Yes sir.

Q. And the statement of the disbursements on pages 3 and 4 show the total amount of disbursements to be $127,744.72, less $3,997.72, now cash on hand? A. Yes sir.

Q. And this statement of disbursements contained on pages 3 and 4, is itemized on page 5, containing a statement of payments paid to the Union National Bank either as principal or interest and on page 6 contained a statement of disbursements for attorneys fees and on page 7, containing a statement of interest disbursed generally, and on pages 8, 9, 10 and 11 containing statement of disbursement for taxes and pages 12, 13, 14, 15, 16 and 17 containing a statement of disbursements on account of Expense does it not? A. Yes sir.

Q. Now, the aggregate of these various statements, itemizing the various disbursements, as I make it, is, $102,105.65, while your general statement of disbursements on pages
353 3 and 4 shows disbursements amounting to $123,767.00, can you explain that?

A. I think probably that is explained on the third sheet.

Q. Does the detail of disbursements to which I have called your attention commencing with page 5, cover the items of $22,799.90 in your general statement of disbursements on page 3? A. It includes part of it.

Q. What part does it include?

A. Interest to December 23, 1895, on Certificates of Deposit, Public Funds.

Q. What is the item in your general statement of disbursements on Page 3 called "Interest to December 23, 1895, on Certificate of Deposit, Public Funds, Bills Payable and Adjustment of Interest on Bills Receivable, taken by Union National Bank, $1250.80" what is that item composed of?

A. Well I don't know that I can explain those items, those items were handled before I had anything to do with the Bank.

Q. Referring to the Schedule of payments made to the Union National Bank, either on account of principal or interest on Page 5, of Exhibit "2", total $66,330.40, was that all paid upon the promissory notes for $67,000.00 each that have been introduced in evidence? A. I think it was.

Q. Can you designate what of the sums set forth here were paid for interest and what was paid for principal?

A. No sir, I cannot.

Q. Does your books show?

354 A. Well I do not think the books would show just exactly what was paid for interest and what was paid for principal; it would have to be taken from the Union National notes how they applied that.

Q. In this total sum of $66,330.40 endorsed as payment on the notes? A. I do not know as to that I am sure.

Q. And is this sum of $66,330.40 the whole sum that has been paid to the Union National Bank?

A. Yes sir, as far as I know.

Q. I noticed in your statement of disbursements on account of interest commencing on Page 7 of Exhibit "33" numerous disbursements of $190.00 to the Bankers Building & Loan Association called "Dues and Interest", what was that for?

A. The Bank I think, held through some other parties—

Q. What Bank?

A. The American National Bank—some shares in the Bankers Building & Loan Association and they negotiated a loan I think of $12,000.00 on Lot 2 Griffin & Smith's Addition and that was in payment of part of the Dues & Interest, that is monthly dues and interest.

Q. That is monthly dues and interest on somebody else mortgage to the Bankers Building & Loan Association?

A. Well, it was virtually the bank's mortgage.

Q. Well, why did you say that?

A. Well, I don't know how that was, that was got before my time.

Q. And you had nothing to do with the business at the time of that transaction? A. No sir not a thing.

355 Q. Do you know what the aggregate sum was paid to the Bankers Building and Loan Association on account of dues and interest on account of that mortgage?

A. No sir; I do not; that could be figured out from the statement, it was included there.

Q. Well I find here an item of $150.00 in this statement of "Disbursements for Interest paid January 28, 1896, Certificate of Deposit No. 6279, Omaha Loan & Trust Company, $150.00" do you know what that is?

A. No sir, I do not, I looked at the records and found that the record of the deposit was $5,000 and that is all I know about it.

Q. Deposited by whom?

A. It was given as the Omaha Loan & Trust Company.

Q. Deposited with the American National Bank?

A. I suppose so, I don't know.

Q. What did the books show?

A. The books show it was deposited with the American National Bank and that certificate issued for it.

Q. Did you ever see the certificate? A. No sir.

Q. What was this item paid March 26, 1896, interest on $5,000 Mortgage, Dallas County, Iowa, land?

A. That was the mortgage on what they used to term "The Gass property".

Q. The Gass farm in Dallas County, Iowa?

A. Yes sir, which was afterwards sold; that is semi-annual interest.

Q. Whose mortgage was it?

356 A. I don't know, I don't know whether the Bank negotiated the mortgage or whether it was negotiated previously by someone else.

Q. The Bank held the title to the land subject to this mortgage. A. Yes sir.

Q. When was that farm sold?

A. It was sold about two years ago I think.

Q. Give the date approximately?.

A. I don't think there is anything to show the date, I think it must have been in the early part of 1900.

Q. What is this item of interest paid May 4th, 1896, called "Interest on $4,000 mortgage Kountze Place $120.00"?

A. That was a mortgage on the Fawcett property of $4,000, I don't know who negotiated that or whether the property was foreclosed and taken in subject to that mortgage, I don't know how we came into possession of it.

Q. You do not know whether the American National had the title to the property subject to the mortgage or not?

A. The American National had the title to the property yes sir.

Q. Has that property been sold?

A. It has been foreclosed.

Q. That is, have you had it foreclosed? A. No sir.

Q. The mortgagee foreclosed the first mortgage?

A. Yes sir.

Q. And has the property been sold under the decree?

A. I don't know whether it has or not.

Q. Is there no showing in this statement anywhere in reference to it?

357 A. There was this showing, I think we got a small payment.

Q. Is that the piece where they paid the $100.?

A. Yes sir, that is the piece.

Q. That is the property in Kountze Place, described as Lot 1 and 2 in Block 17 is it? A. Yes sir.

Q. And you say in your statement on Page 20 of this Exhibit "33" that the mortgagee has taken this on a nominal payment to the Bank, what does that mean?

A. It means we got $100. I don't know whether we gave a quit claim deed to it or not, or whether it was just to let it go. We concluded it was better to take that $100 instead of getting nothing for it.

Q. When did you get that $100 for it?

A. That was in the early part of 1900.

Q. Did you,or Mr. Kimball while acting as Trustee so called, have possession of the property or collect rents from it?

A. Yes sir.

Q. How long did you have possession of it?

A. I think until sometime in 1899; I think the rents were collected until that time, at least part of it.

Q. How much rent did you collect, do you know?

A. I do not remember just now what amount.

Q. What was it rented for?

A. It was rented about that time for $27.50 a month.

Q. Did you collect as much rent as you paid in interest and taxes?

A. I do not know whether we did or not; I think we
358 did pretty close; I think I remember of figuring that up once and at one time I think I figured that it just about paid itself.

Q. What is the present situation of the title to this property in Griffin & Smith's Addition upon which you paid interest for mortgages in the Bankers Building & Loan Association?

A. I do not believe I can tell just what the condition of that is.

Q. What is the amount of the mortgages on the property?

A. The original mortgage was $12000.

Q. And there were four mortgages, were they not?

A. About six mortgages, I think they were reduced to about $9,000.

Q. How was the reduction made, by those payments, that is payments made out of this fund? A. Yes sir.

Q. Where does the title to the property rest now, in the American National Bank?

A. I don't know whether the American National has the title to the property or whether it is in McCague's name.

Q. Have you been making payments on these mortgages and interest on the mortgage loans without knowing where the title was?

A. That was in 1898; I have not made any payments since 1898; that was under Mr. Kimball's handling of the property; the payments were made under Mr. Kimball and the papers will show whether the American National Bank has the title to the property or whether it stands in McCague's name. The probabilities are that the Bank has an assignment if they have not a deed.

359 Q. Have you computed the amount paid to the Banker's Building & Loan Association for interest and principal on those mortgages?

A. No sir; I have not; they simply appear in detail.

Q. Are you able to state from any information [how] in your possession the balance now due upon the six mortgages on this property in Griffen & Smith's Addition?

A. No sir; I am not; at the time the suit was filed I suppose the petition would show the amount then due.

Q. You mean the suit to foreclose the mortgages?

A. Yes sir; that was started.

Q. Is the Banker's Building & Loan Association foreclosing the mortgages now? A. I think they are, yes sir.

Q. And at what stage is the suit now, do you know whether decree has been rendered?

A. I think a decree was rendered and I think it was appealed and carried to the Supreme Court?

Q. Who appealed it?

A. That I do not know; I do not know, I never appeared in the case at all and I do not know anything about it.

Q. This total sum of $10,258.50, on page 7, Exhibit 33, is intended to represent the total disbursements on account of interest, not including the interest paid to the Union National on the three notes of $67,000 each? A. Yes sir.

Q. Now, in the statement of Expense, commencing on page 12, continuing on pages 13, 14, 15, 16 & 17 and showing
360 the total of $14,458.69 you have included all of the expense of liquidating the assets of the American National Bank, have you not? A. Yes sir.

Q. Nothing whatever was charged up to or paid by the Union National Bank?

A. No; there are payments there of $145.83 paid every month when the American National Bank had the funds to pay it, for half the rent of the old Union quarters at 16th and Dodge.

Q. Well, the Union National did not pay that item?

A. The American National paid it to the Union National.

Q. Well, the American National Bank paid all of the expenses included on these pages I have referred to, did it not?

A. Yes sir.

Q. And all of the expenses of liquidating the assets of the American National Bank? A. Yes sir.

Q. Including these items paid monthly to cover one half of the rent of the building formerly occupied by the Union National Bank? A. Yes sir.

Q. Mr. Burness, this resume at the bottom of page 18 of Exhibit 33, purports to show the balance of assets unliquidated October 31, 1901, $185,134.23? A. Yes sir.

Q. And that does not include either stocks, bonds, judgments, securities or claims? A. No sir.

Q. But simply represents the amount of Bills Re-
361 ceivable in your hands that are unliquidated?

A. Yes, what you might call promissory notes.

Q. Not including any interest on them?

A. Not including any interest on them.

Q. And the statement on page 19 shows the balance of stocks, securities, claims, bonds and judgments still unliquidated, of $42,338.40? A. Yes sir.

Q. And the statement on page 20 shows the description of all real estate not disposed of? A. Yes sir.

Q. And some that has been disposed of?

A. And some that has been disposed of, with the statement of October 8, 1899, I think I have put that in there.

Q. Then this statement on page 20 of Exhibit 33, does not include the description of real estate remaining on hand and not disposed of, but simply shows the changes made since October 8, 1899? A. Yes, sir, that is all.

Q. Then the real estate remaining on hand and undispo-ed of will be found in the statement which you had produced and which is marked Exhibit 30, subject to the changes which are shown on this page 20 of Exhibit 33? A. Yes sir.

Q. Now, on page 20 of Exhibit 33 here is an item, "Ambler Place, Lot 12, Block 32, notation, Contract of sale made, $500." what is that?

A. That is the property has been contracted for sale and a part payment has been made on it by the trustee.

Q. Who did it, you? A. Yes sir.

Q. How much was received in money?

362 A. $50.00.

Q. And that I suppose is included in your statement of cash received? A. Yes sir.

Q. And where have you included in this statement the contract from which the balance of $450 is unpaid?

A. Well, it is not included in there.

Q. Not included in the statement at all?

A. No sir; not included in the statement at all.

Q. So that it does not appear any place? A. No.

Q. But the Lot 12, Block 32 appears in the assets?

A. Yes sir.

Q. There is also an item page 20, "South Omaha, Lot 7, Block 121, contract of sale made $500", what are the facts in regard to that?

A. That lot was practically the same as the Ambler Place Lot, $50 has been paid on that, and you might take that other lot with it, the $50., has been paid and it was applied on commissions on both lots; both lots were sold by the same party. Lot 8 has been sold and a deed has been given, and the party wanted the other lot.

Q. That is Lot 8, Block 121, South Omaha?

A. Yes sir.

Q. That has been sold absolutely?

A. Yes; and deed given for it.

Q. This item, page 20, Exhibit 33, "Douglas County undivided half interest in Waterloo property, 23 acres, and E. ½ N. E. ¼ Sec. 10-15-10, and southwest quarter N. W. ¼, Sec. 11-15-10", the notation is "Sold for $3500, one-half to bank."?

363 A. That is what we call the Waterloo property out here in Douglas County, one-half belonged to the bank and the other half belonged to J. E. Markel; that was sold for $3500. The first payment was $100, of which the bank got $50, the other $50 went to Markel, and we got notes for the balance. I have the notes now charged up to loans and discounts, made additions to that statement, I think, of $1750.

Q. Has a deed been made to the purchaser?

A. A deed has not been made yet; I think there is simply a contract for sale.

Q. And you have those notes among the assets still?

A. Yes sir.

Q. Undisposed of? A. Yes sir.

Q. This Dallas County farm that is sold absolutely and closed up?

A. Yes, absolutely, and closed up, and the brick plant the same way.

Q. Explain this item under the head of "Additions 20", on page 20 of Exhibit 33, you say "Additions to 2 inches Tax Lot 16, Section 21-15-13"?

A. I found on Exhibit 30, that the real estate mentioned there was not included in that statement, and should have been.

Q. That is you found the bank owned two inches of ground there more than was included in your Exhibit 30?

A. Yes sir.

Q. And what explanation can you make of the next item "Undivided 1-8 west one-half N. E. ¼ N. E. ¼ Sec. 6-15-13, Douglas County, divided, bank holds 2½ acres"?

364 A. That was a collateral to N. B. Ours note, and he went through bankruptcy and we had a deed to that property, and put it in the real estate and his note was charged up to profit and loss.

Q. The bank has the title to this 2½ acres? A. Yes sir.

Q. Is it unencumbered?

A. Yes, it is unencumbered; it was originally about 20 acres.

Q. What does the word "divided" signify here, that there is a partition of the property made? A. Yes sir.

Q. So that bank now holds the title to 2½ acres?

A. Yes sir, that is my recollection.

Q. What does the item, "Bowling Green, Lots 4, 5 6 and 7, Block 8", and your memoranda or notation is, "From Flack, John F."?

A. It is a deed we got from Flack in our compromise of his indebtedness.

Q. So that the bank has the title to those lots?

A. Yes sir.

Q. What did you compromise with John F. Flack, is he not solvent? A. I don't think he is.

Q. Is he the man connected with the Conservative Building & Loan Association? A. Yes sir.

Q. Explain this item, "Ackerman Place, Lot 2, Block 7, from C. F. Harrison?"

A. That is another lot that was taken in in part compromise of Harrison's note, C. F. Harrison, a real estate man.

365 Q. Who took the title to that Lot from Harrison? Was it taken after December 21, 1895?

A. Yes; I took it as trustee.

Q. To yourself as trustee?

A. I forget now whether it reads to myself as trustee or to the bank; I think I asked him to make it out to the bank; he may have made it in my name; I do not recollect just how it was made out.

Q. And how was the title taken from Flack to Lots 4, 5, 6, & 7 Block 8, Bowling Green?

A. That was to the American National Bank.

Q. Taken before Dec. 21, 1895? A. After.

Q. Who took that? A. I took that as Trustee.

Redirect Examination

By Mr. Macomber:

Q. Mr. Burness, referring to those payments that were made by Mr. Kimball to the Bankers Building & Loan Association, what do you find as to where the title of that real estate was?

A. It is held by the American National Bank.

Q. And it is in your hands as an asset? A. Yes sir.

Q. And the payments were made, as I understand, upon a first mortgage that this Banker's Building & Loan Association had upon the land? A. Yes sir.

Q. Now, on page 7 of this Exhibit 33, that item of $329.58; under a contraction of certificate of deposit, you may explain whether that is one or more certificates?

366 A. It is more certificates.

Q. Do you know anything further about those certificates?

A. Nothing further than they were simply certificates of deposits assumed by the Union National accrued interest up to December 23, 1895.

Q. Assumed and paid by the Union National Bank?

A. Yes sir.

Q. When you say assumed by the Union National Bank you mean it was one of the Bills Receivable that the Union National paid for the American National? A. Yes sir.

Q. And the interest on those you have carried into the interest payments?

A. In the Expense payments it is shown as an interest payment.

Q. Now, all of these payments of interest that appear here under the Interest Account of Exhibit 33, you may state what the fact is as to their being made to preserve the assets of the American National Bank?

Each of the respondents object as calling for the conclusion of the witness.

A. I would think most of the interest charges made there were made by Mr. Kimball and made at that time, I presume to preserve the assets held by the Bank; there may have been a few charges there that were made by myself; but they are very few I think.

Q. Now in a general way, Mr. Burness, what were these expenses paid out for, I ask this question, calling your attention to a question, as I understand, made by Mr. Morsman,
367 that these expenses were all met in the liquidation of these assets, you may state generally what the purposes were that these expenses were paid out for?

A. In a general way they were expenses incurred by the liquidation and charged on that account.

Q. What do you mean by liquidation?

A. Well, in the conduct of the business, collecting the assets and preserving them as far as possible.

Q. I will call your attention to an item here on page 12 in the account of Expense, in Exhibit 33, of Salaries $445.92, you may state if those payments were for salaries before or since the funds went into the hands of the Trustee?

A. They were salaries paid before the funds went into the hands of a trustee; they were paid after Mr. Kimball took hold of them as Trustee, but whether they were salaries prior to December 23 or afterwards, I am unable to state, the books don't show when they were.

Q. In these several items then entries indicating for what purpose the several amounts were paid are true?

A. As far as I know, yes sir.

Recross-Examination

By Mr. Morsman:

Q. Mr. Burness, do you say this item of interest, $329.58 paid December 27, 1895, was interest accrued on certificates of deposit issued by the American National Bank?

A. Yes; certificates of deposit issued by the American National Bank.

Q. Assumed by the Union National Bank?

A. They had assumed the certificates of deposit entirely and at that time the interest was not paid, when the certificate

was issued, and there was accrued interest up to that date, so that after the Union National took those certificates
368 they would be liable for the face value with the interest added.

Q. That was the accrued interest then, on outstanding certificates of deposit? A. As I understand it, yes sir.

Q. Which the Union National Bank assumed?

A. Yes sir.

Q. You do not know, do you, that this $329.58 was not included in the amount of the three notes for $67,000 each?

A. I do not, no sir.

Q. You did not make this payment yourself, $329.58?

A. No sir.

Q. You simply find it on the books kept by Mr. Kimball?

A. Yes sir.

Q. This interest paid on County funds, $293.24, you do not know that this is not included [un] the three notes for $67,000 each? A. I do not, no sir.

Q. You simply find it on the books kept by Mr. Kimball?

A. Yes sir.

Q. Or the item of $7.94, interest paid on City Funds?

A. No sir.

Q. Or the item of $147.20 paid to William Minot?

A. No sir.

Q. Or the item of $20.61 paid to the Lawrence Bank?

A. No sir.

Q. Do you know whether the item of $252. paid Dec. 28, 1898, entered on your statement of Bills Payable,
369 whether that was included in these three notes of $67,000 each? A. I do not.

Q. Can you give any explanation of it? A. No sir.

Mr. Smith: I suppose if we desire any further cross-examination we can have it.

Mr. Macomber: Yes, certainly.

JAMES BURNESS.

Stamped: Filed Dec. 30, 1901. Geo. H. Thummel, Clerk.

370 Mr. G. W. Wattles, of lawful age, being first duly examined, cautioned and solemnly sworn, as hereinafter certified, deposeth and sayeth as follows, viz:

Direct Examination

By Mr. McCulloch.

Q. State your name? A. G. W. Wattles.

Q. Mr. Wattles, what is your business? A. Banking.

Q. With what Bank are you connected?

A. Union National Bank.

Q. How long have you been connected with the Union National Bank? A. Ten years.

Q. What was your position with the Union National Bank in December, 1895? A. Vice President.

Q. Do you remember the time the contract was made between the Union and American National Bank whereby the Union went into the building formerly occupied by the American and assumed the deposits of the American National Bank? A. I do.

Q. Were you present at the time of the carrying out of the transactions and turning over of the assets and deposits etc., that constituted that contract? A. I was.

Q. Who was present at that time besides yourself?

A. Mr. Kimball, Mr. Wyman, Mr. Ford, Mr. Marsh and myself.

371 Q. Now, you may state just in a general way what was done at that time to determine the assets which were taken by the Union National Bank under that contract and the settlement that was made?

A. The amount of liabilities of the American were ascertained from the books of the bank, including the amount due depositors, the amount due on notes payable and the amount due to any other creditors; from this amount was deducted the cash on hand which was turned over by the American to the Union; the balance as I remember it, amounted to about $240,000.

Q. Now, when you say balance—

A. The balance of liabilities of the American National Bank over and above the cash assets that they had on hand. Under the terms of the contract the Union National Bank agreed to take absolutely those notes which they might approve on examination. This examination was not made for a few days after the transfer, but it was estimated when the transfer was made that the Union National would not take more than $40,000 of the notes, on a casual examination, and therefore, the American National gave its notes to the Union National for the amount of $201,000, as I remember.

Q. In three notes?

A. In three notes of $67,000 each, and for the balance gave a cashier's check of about $39,000, with the understanding that this cashier's check was to be paid out of the notes that the Union took absolutely in so far as these notes were purchased.

Q. So that at the time the $201,000 in notes were given to represent the difference between that and the $240,000

372 a cashier's check of $39,000 was given? A. Yes sir.

Q. Now, after that was there any adjustment of that

cashier's check on the basis of the Union taking any of the notes, and if so, what was that adjustment?

A. Yes, sir; there was, I should say a week or ten days, possibly longer, after the transfer the notes were examined and about $21,000, as I recall, of these notes were selected and taken over by the Union absolutely, from the American, and the amount of them was credited on this cashier's check, or rather, this $39,000 cashier's check was taken up and a new one issued for the balance after the notes had been deducted.

Q. And then what did the Union National do with the $17,000 cashier's check, or what was done with it finally?

A. It was held until it was finally paid.

Q. By whom? A. By the American National.

Q. Through whom? A. Mr. Kimball.

Q. Now, Mr. Wattles, you may also state what was done at that time, if anything, with the assets of the American National which were not assumed or taken by the Union National?

A. They were turned over to Mr. Kimball, or rather they remained in the possession of Mr. Kimball.

Q. Where did Mr. Kimball from that time on have his office?

A. He had his office in the director's room of the Union National Bank.

Q. That was the same office room, was it, that is, the old banking room was the same banking room, that had theretofore been occupied by the American? A. Yes sir.

373 Q. Where was the Union National Bank located before that time? A. At the corner of 16th and Dodge.

Q. And where had the American National Bank been located and the Union National Bank removed to?

A. Corner of 15th and Dodge.

Q. Its present location? A. Yes sir.

Q. You may state, Mr. Wattles, who, if any one, assisted Mr. Kimball, or was in his employ in the collection of the assets from that time on?

A. Mr. Wyman was employed for the first year or two.

Q. What Wyman was that, what position had he held before?

A. Mr. Henry Wyman, he had formerly been Cashier of the American National.

Q. And about how long did he remain with Mr. Kimball? in the collection of the assets?

A. I think a little over a year; I am not positive though.

Q. And who succeeded him, if you remember?

A. Mr. Burness.

Q. The man who is now acting as Trustee? A. Yes sir.

Q. Mr. Kimball is dead? A. Yes sir.

Q. You may state Mr. Wattles, what, if any, control the Union National Bank had or exercised over these assets which you say were left in the hands of Mr. Kimball? A. Not any.

Q. And what it had to do in their collection?

374 A. Not any control over them and had nothing to do with their collection.

Q. By whom was that attended to?

A. By Mr. Kimball and Mr. Wyman; later on by Mr. Burness.

Q. You may state, Mr. Wattles, whether during any of the time of the control of these assets by Mr. Kimball or Mr. Burness you or the officers of the Union National Bank were consulted with reference to their collection or disposition, and if so, at what time did it commence and under what circumstances?

A. Yes sir, I was consulted frequently regarding the compromise of notes and sales of property after it was discovered that the assets were not sufficient to pay the notes of the American National; I think about two years, perhaps less than two years after these notes were given; it became apparent that the assets were not sufficient to pay the notes. Then Mr. Kimball talked with me about it, and said that he thought it was proper that I should be advised with concerning any compromises of notes or sales of property that were made after that time, and I was advised with by Mr. Kimball and have been since by Mr. Burness.

Q. Have you been, Mr. Wattles, in a situation where you could observe and see and know the work that was being carried on by Mr. Kimball and Mr. Wyman, and subsequently by Mr. Burness in their efforts to collect these assets?

A. Yes sir.

Q. You may state in a general way just what was done in that regard?

375 A. Mr. Kimball and Mr. Wyman started vigorously to collect the assets, to collect the notes, and Mr. Wyman went out of the bank frequently and saw parties that were owing the bank, urged them to pay, brought parties in to the bank to consult with Mr. Kimball, and they talked together with debtors of the American National and urged them to pay; and they sought to sell the real estate and other property that they held and did sell some of it, and were quite busy for the first year or so.

Q. Did Mr. Wyman put in his whole time there?

A. Yes sir.

Q. And Mr. Kimball also? A. Yes sir.

Q. So that they both were in the office working upon the assets of the American National Bank every day?

A. Yes, for some time, and as long as Mr. Wyman was employed.

Q. And after Mr. Wyman left, who, if anybody, assisted Mr. Kimball? A. Mr. Burness.

Q. And that continued up until what time?

A. Until the time that Mr. Kimball was appointed Trustee by the court, and even after I think, Mr. Burness was in his employ. I will change that answer. I had in my mind that Mr. Kimball was appointed trustee, I will say up until the time Mr. Burness was appointed Trustee by the court.

Q. You may state, Mr. Wattles, whether or not you were acquainted with the general business situation in the City of Omaha and surrounding country along about the beginning of the year 1896, and subsequent to the time of the bringing of this suit? A. I was.

376 Q. And you may state what that was and what difficulties, if any, there were with the collection of the accounts?

A. The conditions in the City of Omaha and the state of Nebraska were very bad; it was very difficult to collect notes from people who owed during that period, very hard to realize the value of property on sales during that period.

Q. What was the condition of the real estate?

A. There was very little real estate changing hand; that that was sold during that period was sold at very low prices.

Q. And going back for a moment to the original transfer which resulted in the giving of these three notes, in evidence, you may state what was done by the Union National Bank in the assumption of the deposits, how was that transaction carried out?

A. The balance standing to the credit of the depositors of the American National as shown by their books at the close of business on the date of the transfer, December 21, 1895, were transferred to the books of the Union National Bank and were paid. These balances were assumed and were afterwards paid by the Union National Bank.

Q. Are you able to state, Mr. Wattles, about what proportion or what amount of those deposits were called for within a short time after their assumption by the Union National, within, say the next thirty days or during January of the following year?

A. Yes sir; more than half of the deposits and liabilities assumed by the Union were called for and paid in money within the next thirty days after the transfer.

377 Q. Calling your attention to a paper which has been marked in this case as Exhibit 25, I will ask you if you ever saw that paper before? A. Yes sir; I have.

Q. Calling your attention to the signature or the writing of the name, Chas. W. Morton, I will ask you if you know whose signature or whose handwriting that is?

A. Yes sir, I know that to be the handwriting of Charles W. Morton.

Q. You were acquainted with Charles W. Morton?

A. Yes sir.

Q. Calling your attention to the next name on the same paper, James H. Morton, do you know whose writing and signature that is? A. Yes sir.

Q. Whose is it? A. James H. Morton of this city.

Q. You are acquainted with him? A. Yes sir.

Q. Calling your attention to the next signature, Mary E. Morton, are you acquainted with her? A. No sir, I am not.

Q. You do not know whether that is the signature of Mary E. Morton or not? A. No sir.

Q. Now, Mr. Wattles, you may examine that paper thoroughly and after having examined it, state when you first saw it in its present condition, if you are able to state?

A. I cannot give the exact date, but it was sometime between the 21st day of December, 1895, and the date of the meeting of the stockholders of the American National
378 Bank, on which they voted to go into liquidation—I think that was the 21st day—no, not the 21st—some day in February 1896.

Complainant now offers Exhibit 25 in evidence. Copy on page 259; original on page 261.

Cross-Examination

By Mr. Morsman:

Q. Mr. Wattles, how long after December 21, 1895, to your best recollection was it that you first saw this paper which has been marked 25 and last mentioned in your examination in chief?

A. As near as I can recollect it was a day or two before the meeting of the stockholders of the American National Bank that I saw the paper.

Q. And that meeting, you think was February 26, 1896?

A. Yes sir.

Q. Do you know who got up this paper marked Exhibit 25?

A. Yes sir.

Q. Who. A. Mr. Kimball.

Q. At [those] instance? A. I do not know.

Q. Did he consult with you about it or you with him, before getting it up? A. No sir.

Q. How do you know that he got it up?

A. He showed it to me before the meeting of the stockholders of the American in reply to a question I asked him regarding the probability of a favorable vote to liquidate the bank. He showed me this paper at that time and said that more than the required amount of stock had approved of this action and signified their approval by signing this paper,

379 and he did not think there would be any doubt about the vote at the stockholders meeting.

Q. And was this paper gotten up and the signatures procured with a view to ascertain what the probable result of that meeting would be? A. I do not think so.

Q. But you did not see it at all until about February 26, 1896? A. A day or two before that as I recollect it.

Q. And it is your best judgment that it was gotten up and signed just a day or two before this meeting?

A. No sir; I think it was gotten up immediately after the transfer was made and signed during the next week or ten days after the transfer was made.

Q. Why do you think so?

A. From something that Mr. Kimball has said to me in regard to it.

Q. You do not know the date when it was signed by any of these stockholders? A. No sir; I do not.

G. W. WATTLES.

By agreement of parties the further taking of testimony under the annexed notice is adjourned until Saturday November 16, 1901 at 10 o'clock A. M.

380 Omaha, Saturday, November 16, 1901, 10 A. M.

The same parties being present as heretofore, the further taking of testimony under the annexed notice is resumed as follows:

Mr. James Burness, called for further cross-examination on the part of respondents:

Examined by Mr. Smith:

Q. Mr. Burness, in your statement marked Exhibit "30", under the head of Expenditures, on page 1, you say, "Expenses prior to liquidation, $4985.99", do you not? A. Yes sir.

Q. Now, in your statement marked Exhibit "33", on page 3, you have the amount off on the right, evidently an addition, $4985.99, now is that the same $4985.99 that is on the other exhibit? A. That is the same.

Q. Now, I see that in this item, that is one of the items going to make up this item of $4985.99, is attorneys fees, $2589.98, is it not? A. Yes sir.

Q. And will you turn to page 6 of your Exhibit "33" and state what items added together make up this $2589.98?

A. Well, I think it would be difficult to do that for the reason that the probabilities are that there are some costs added in with the attorneys fees to make up that amount, but the attorneys fees that are put in as prior to liquidation that is the $4900, and the attorneys' fees added after that, and the statement on page 2—page 3—probably make the total amount of the attorneys' fees of the two items.

381 Q. Now, what do you mean by the word "liquidation" which you used on page one of Exhibit "30"?

A. Well, I took that word from a statement that had been previously made by Mr. Wyman; I just used the same word.

Q. That is, by Mr. Wyman for Mr. Kimball, you mean?

A. Yes sir.

Q. It was Mr. Kimball's statement in reality, was it not?

A. Yes sir.

Q. And you have no means of knowing, have you, whether that word "liquidation" refers to the 21st day of December, 1895, or the 25th or 26th of February, 1896, or a later date, have you?

A. No means of knowing, no; although I took it for granted, of course, that it meant the 21st day of December.

Q. Now, turning to page 6 of Exhibit "33", I find the entry December 30, 1895, "H. B. Smith, $700.00", now do you know what [the] time the account or bill for that was rendered to the American National Bank?

A. Well, I looked [—] up the other day; I found a lot of bills and amongst them that one, dated March 20, 1895.

Q. Now, how is it with reference to the item of $333.33?

A. There was a bill dated December 27, 1895.

Q. And that referred to matters previous to December 21st?

A. Yes sir; I think that bill read "For services", or something, "March, 1895".

382 Q. Now take the item of 1896, January 11th, H. B. Smith, Franklin Savings Bank vs. Nichol, $327.20, do you know when that bill was rendered?

A. That bill was dated December 18, 1895.

Q. Now, the item of January 27th, Hall & McCulloch, Holdrege Bond suit, $1,000, that was for services performed before the 21st day of December, 1895, was it not?

A. As I understand it, yes sir.

Q. The next item is "1896, May 26, H. B. Smith, on account, $150.00", now were there any accounts that had been filed against the bank prior to May, 26, 1896, by Mr. Smith?

A. Well, those bills that have been mentioned were prior to that date.

Q. And this payment was upon those bills, on account of those bills that had been filed prior to that time?

A. I think probably, evidently had.

Q. I see [it] the words "on account" here. Then state whether or not the total amounts appearing to have been paid to Mr. Smith here was less than the bills rendered by Mr. Smith to the American National Bank?

A. Yes, the total amount that appears there was less.

Q. And were those bills that had been rendered by Mr. Smith for services that had been performed prior to or after December 21st?

A. They all seemed to be prior to December 21st; in fact all the payments that have been made to Mr. Smith there seemed to have been on business prior to that date, as far as I could see, looking at the bills.

383 Q. Now, turning to page 1 of Exhibit "30", I find the item under the head of "Expense, attorneys fees, $2114.93", can you by turning to page 6 of Exhibit "33" show what items go to make up that item?

A. No; I do not believe I could by that exhibit.

Q. Now, turn to your Exhibit "33", page 13, and find this item, "June 29, 1896, Omaha Mercury, advertisement, liquidation, $6.85," what was that?

A. I do not know what that was.

Q. Well, would you say from your best judgment that that was a payment for a legal advertisement in some paper?

A. Yes; I should judge it was.

Q. Now, is that true of the item of "July 13, Stumpf & Hemer, liquidation notice, $10.00"?

A. I suppose that would be the same thing, although it is something I do not know anything about.

Q. I think you testified on your direct examination that the books of the American National Bank were closed on December 21, 1895, and that they were thereafter continued by Mr. Kimball? A. Yes sir.

Q. Were there other books of account opened by him at that time or after that time?

A. Well, the old books were simply continued.

Q. There were no new books used?

A. Not that I know of; I don't know of my own knowledge.

384 Q. Do you know of any other accounts kept by Mr. Kimball in any capacity other than the ones which you have itemized here in Exhibits "32", "31" and "33"?

A. No, I do not.

Q. So far as you have discovered there have been no other accounts kept by Mr. Kimball in any capacity?

A. None that I know of.

Q. I note on page 12 of Exhibit "33", under the head of Expense the item of "February 3, One half rent Union old quarters, $145,83", was that for the rental of the quarters that had been occupied by the Union National Bank before it moved over to the offices of the American National Bank?

A. Yes sir.

Q. When did that payment commence, what month?

A. I suppose it commenced on December 23, 1895.

Q. Please look at your account, does not your account show that on January 6, 1896, there was rent for December paid of $300.?

A. Well, I think that was the rent of the American quarters.

Q. Then this item of $145,83 is the rent for the one-half of the old Union quarters for February, 1896?

A. I do not know; it may be January or may be February.

Q. It was paid in February?

A. Well, I suppose it is January; I rather think it is January; I could not say as to that.

385 Q. Do you find any other item of that nature later than December 27, 1897, on page 14?

A. No; I do not think there is any payments later than that; I think that is the last payment that was made on that account.

Q. And those payments were made monthly during the period from the first item I gave you until the last item I gave you?

A. In so far as the funds of the American would allow I don't know that payments were made every month; sometimes we were a little short in cash and it went over to the next month, but there was paid on that account $145.83 every month.

Q. Did these payments cease when the Union National rented its old quarters? or when its lease expired?

A. I think so, although I do not know; I suppose it would; I never saw the lease. I do not know when it expired.

The further taking of depositions under the annexed notice is adjourned to meet, by agreement of parties, on Friday, November 22, 1901, at 10 o'clock A. M.

JAMES BURNESS.

Stamped: Filed Dec 30, 1901. Geo. H. Thummel, Clerk.

386 Omaha, Nebraska, Friday, November 22, 1901, 10 A. M.

The same parties being present as heretofore, the further taking of depositions under the annexed notice is resumed pursuant to adjournment.

Mr. G. W. Wattles, called for further examination by complainant.

Examined by Mr. McCulloch:

Q. Mr. Wattles, in your examination the other day you stated that from time to time you were consulted by Mr. Kimball with reference to these assets, you may now state how often you talked with Mr. Kimball in a general way about these assets and about when those talks began, and what was the occasion of them?

Each and all of the defendants object on the ground that it is incompetent and immaterial.

A. The talks began about a year after the assets were turned over to Mr. Kimball as trustee. The occasion was that the payments in the Union National Bank had about ceased, and it became important to me as an officer of the Union National Bank to investigate the security behind the notes of the American National which we held. I [meade] inquiries of Mr. Kimball and he then laid the securities before me and we examined them and looked them over and talked them over very carefully many times from that time on until I became quite thoroughly conversant with the value of the notes and assets which he held.

Q. That you say was about one year after Mr. Kimball had taken charge as trustee? A. Yes; I think about a year.

387 Q. You may state, Mr. Wattles, whether from that time on you have had a general knowledge from these various examinations of the condition and situation of these assets? A. I have.

Q. And are you acquainted at the present time with the assets which are still in the hands of Mr. Burness, trustee?

A. I am.

Q. And you may state whether or not you have a knowledge of not only the condition, but the general value of these various assets? A. I have.

Q. You may state, Mr. Wattles, what in your judgment the assets which still remain undisposed of are worth, or what could be realized on them?

Each and all of the defendants object as incompetent, immaterial and calling for the opinion of the witness, and also being too general and vague.

A. Somewhere from $10,000 to $20,000.

Q. What position do you hold at the present time in the Union National Bank, Mr. Wattles? A. President.

Q. Whom did you succeed as President?

A. W. W. Marsh.

Q. He was the Mr. Marsh who was president of the Bank at the time this contract in controversy was executed?

A. Yes sir.

388 Q. You may state whether or not Mr. Marsh is still living? A. He died in April, 1901.

Q. Were you acquainted with William Minot, mentioned in this examination? A. I was.

Q. You may state whether or not he is still living?

A. He is not; he died in the Fall of 1900, as I recollect.

Q. Were you acquainted with Mr. Dufrene, one of the directors of the American National Bank at the time this contract was made? A. I was.

Q. You may state whether or not he is still living?

A. He is dead.

Q. About when did Mr. Dufrene die? A. I think in 1899.

Q. Since the commencement of this action, was it not?

A. Yes sir.

Q. You may state about Mr. Kimball, the President of the American National Bank, is he still living?

A. He is not; he died in 1899, I believe, or 1900.

Q. Mr. Wattles, you may state whether or not you are acquainted with the signature of the present Comptroller of the Currency, Mr. Ridgely? A. I am.

Q. Calling your attention to a paper which the reporter will mark as Exhibit "34", and which purports to be a certified copy of a portion of the records of the Comptrollers office, you may state whose signature appears to the certificate of that Exhibit?

389 A. William B. Ridgely, the Comptroller of the Currency.

Complainant offers Exhibit "34" in evidence.

Each and all of the respondents object as immaterial and irrelevant. Copy on page 300. Original on 298.

Cross-Examination

By Mr. Morsman:

Q. How did you become acquainted, Mr. Wattles, with the signature of the Comptroller of the Currency?

A. By the receipt of documents and papers connected with the Union National Bank.

Q. You never saw him write his signature? A. No sir.

Q. You never saw any signature that you personally know he acknowledged to be his own? A. No sir.

Q. What control, supervision or direction did you or any other of the officers of the Union National Bank exercise over the disposition and liquidation of the assets of the American National after December 21, 1895?

A. Not any, except in an advisory capacity.

Q. Will you just explain as fully as you can, Mr. Wattles, to what extent you acted in an advisory capacity yourself, or any other officer of the Union National?

A. Nearly all of the consultations between the trustee and any officer of the Union National Bank were held by me on the part of the Union National Bank; first, Mr. Kimball would consult with me, and after he died, Mr. Burness. As I explained in my direct examination these consultations
390 commenced about a year after Mr. Kimball took possession of the assets as trustee, and they were begun on the statement from me to him that I thought we were not receiving [sufficinetly] frequent payments on the notes of the American National, one of them having become due and not having been paid; and I thought we should be allowed to look into the security and advise with him regarding the liquidation or the realization of the money on the assets in his hands. He agreed with me that it was then apparent to him that the assets were not going to be sufficient to pay out the amount of the notes, and therefore we should be consulted. Frequently after that conversation he would ask me about the advisability of compromising a claim if offers of compromise were made, and I advised with him as often as he submitted any matters to me; and frequently I asked him about certain of the assets, inquired into the progress that was being made to convert them into money.

Q. There was never any disagreement between yourself and Mr. Kimball, was there, or any other officer of the Union National Bank? A. None whatever.

Q. Or between yourself or any other office- of the Union National and Mr. Burness? A. No sir.

Q. Had you prior to the expiration of one year from the date of the contract, December 21, 1895, made any effort to exercise any control or supervision over the liquidation or disposition of the assets? A. No sir.

391 Q. You considered the three notes that were held by the Union National Bank as an absolute debt of the American National Bank to the Union National Bank, did you not? A. Yes sir.

Q. And gave no attention to the subject of the liquidation of the assets until about the time that the first of the notes, according to its terms, matured? A. No sir.

Q. Then after that you gave more attention to the subject?

A. Yes sir.

Q. But everything was done by Mr. Kimball so long as he lived, and afterwards by Mr. Burness, that you suggested or desired to be done, with a view to the liquidation of the assets?

A. I cannot say that exactly because I did not give advice, unless consulted or advised, on my own motion; but whatever advice was given, under the circumstances, as I have outlined, was usually acted on.

Q. Then if you did not suggest or advise on your own motion or make any demand with reference to the matter everything was in fact done by them which you requested to be done?

A. Yes; there was never any disagreement between us. I might make a request to have something done and they would give me sufficient reason why it would not be done and then it would not be done.

Q. You would accept their reasons as being sufficient?

A. Yes; we would talk it over together.

G. W. WATTLES.

392 COPY OF EXHIBIT "1".

Agreement.

This Indenture Witnesseth, That the American National Bank, a corporation of Omaha, Nebraska, hereinafter designated party of the first part, has and by these presents does hereby agree for the considerations hereinafter expressed to and with Union National Bank, a corporation of Omaha, Nebraska, hereinafter designated party of the second part, as follows, to-wit:

First:—The party of the first part hereby agrees to sell and assign and does hereby sell and assign to the party of the second part the business of the party of the first part, its cash on hand, office furniture and fixtures and such of its bills receivable as the party of the second part on examination may be willing to take as cash without recourse on the party of the first part.

Second:—The party of the second part hereby agrees to purchase and does hereby purchase from the party of the first part the business of the party of the first part, cash on hand, office furniture and fixtures, and such bills receivable as the party of the second part may be willing to take as cash on examination of the same without recourse on the party of the first part and to pay the party of the first part for said office furniture and fixtures the sum of Three Thousand Seven Hun-

dred and Fifty ($3,750.00) [—] and to assume the liabilities of the party of the first part to its depositors and on account of its bills payable and to liquidate the remaining assets of the party of the first part which may not be taken and received
393 as cash by the party of the second part without charge or expense to the party of the first part, except such court charges and attorney's fees as may be found necessary, and that such [kuquidation] shall be conducted under the direction of Thomas J. Kimball or such other person as may be agreed upon on behalf of the st-ckholders of the party of the first part, it being understood and agreed that said Kimball or his successor shall represent in said liquidation the stock-holders of the party of the first part, and shall receive, hold and use the proceeds of the assets of the party of the first part as trustee of the parties hereto for the mutual protection of the rights of each in accordance with the terms and conditions of this agreement, and that all necessary Court charges and attorney's fees attending said liquidation shall be incurred under the direction of the said Kimball, or his successor.

Third:—In consideration of the above agreement of the party of the second part, the party of the first part hereby agrees to sustain and pay one-half of the loss and expense which the party of the second part may sustain on account of removal from its presen. quarters by reason of its unexpired lease on its present place of business, and one half of the loss which the party of the second part may sustain on the sale of its office furniture and fixtures, which furniture and fixtures are agreed upon at the present price and value of Three Thousand Seven Hundred and Fifty ($3,750.00) Dollars, and the party of the first part further agrees to guarantee and does
394 hereby guarantee the party of the second part against any and all loss on account of assuming the liabilities of the party of the first part as aforesaid. And to this end the party of the first part agrees to execute and deliver to the party of the [secnnd] part its three promissory notes of equal sums for the amouat of liabilities [whoch] the party of the second part may assume after crediting the full amount of cash on hand and bills receivable and other assets which may be accepted by the party of the second part on examination, which notes shall draw interest from date at the rate of six per cent. per annum, payable quarter annually, and be payable in one, two and three years from date respectively, and shall be non-negotiable. And in case of non-payment of any of said notes when due the whole of said principal sums of all of said notes and accrued interest shall thereupon become due. And as further security to the party of the second part the

party of the first part agrees to sell and assign and does hereby [seell] and assign to the party of the second part all of its assets which may remain after the selection therefrom by the party of the second part heretofore mentioned, including all its bills receivable, stocks, bonds, personal property of every kind and all real estate and rights and interests therein or liens thereon, with the understanding and agreement that the party of the second part shall have and hold said assets and properties subject to the right of the said Thomas L. Kimball, or his successor, to collect and convert the same into cash for the uses and purposes hereinbefore expressed.

And it is further agreed that the party of the first
395 part may pay and have credited on said notes at any time prior to maturity any sums of money of Five Hundred ($500.00) [—] and upwards, provided the sums so paid shall be in even hundreds.

Witness the names and corporate seals of the parties hereto this 21st day of December, A. D. 1895.

THE AMERICAN NATIONAL BANK
OF OMAHA,

Attest: By Thos. L. Kimball, President. [Seal]
Henry F. Wyman, Cas.

UNION NATIONAL BANK OF OMAHA,

Attest: By Wm. W. Marsh, Pt. [Seal]
Chas. E. Ford, Cashier.

Endorsed on back: Agreement Between American National Bank and Union National Bank.

396 COPY OF EXHIBIT "2".

$67,000.00 Omaha, Neb., Dec. 23, 1895.

One year after date for value received we promise to pay to The Union National Bank, Sixty Seven Thousand Dollars at its Banking Office in Omaha, Neb., with interest at 6 per cent per annum from date, payable quarterly until paid

No. 7397 THE AMERICAN NATIONAL BANK,
By Thos. L. Kimball, President.

Attest: Henry F. Wyman, Cas.
Due Dec. 23, 1896.

Endorsed on back as follows:
Paid Jan. 27 1896, $3000.00
Paid Feb. 29, 1896, $3000.00
Paid Mar. 10, 1896, $1000.00
Int. paid to Mch. 23 1896.
Paid May 5, 1896, $6000.00

Paid May 16, 1896, 4000.00
Int. paid to June 23, 1896.
4/16/97 Interest paid to Mch. 23, 1897.
4/16/97 Paid Mch. 23-1897-$8235.
Paid May 12 1897 $4000.00
Pay Sumner Wallace or order without recourse

UNION NATIONAL BANK,
By J. W. Thomas, its Cashier.

Aug. 8th, 1898.

397 COPY OF EXHIBIT "3".

$67,000.00 Omaha, Neb. Dec. 23, 1895.

Two years after date for value received we promise to pay to The Union National Bank Sixty Seven Thousand Dollars at its Banking Office in Omaha, Neb., with interest at 6 per cent. per annum from date, payable quarterly until paid.

THE AMERICAN NATIONAL BANK,
By Thos. L. Kimball, President.

Attest: Henry F. Wyman, Cas.
No. 7398.
Due Dec. 23, 1897.

Endorsed on back as follows:
Int. paid to Mar. 23, 1896.
Int. paid to June 23 1896.
Int. paid 2/17/97 to Sept. 23 1896.
4/16/97 Interest paid to Mch. 23-1897.
Mch. 16-1899 Paid on principal $2000.00
2/8/00 Int. Pd to Aug. 6, 1897, 1500.00
5/12/00 Int. pd to Nov. 18, 1898, $5m.

398 COPY OF EXHIBIT "4".

$67,000.00 Omaha, Neb. Dec. 23, 1895.

Three years after date for value received we promise to pay to The Union National Bank Sixty-seven Thousand Dollars at its Banking Office in Omaha, Neb., with interest at 6 per cent per annum from date payable quarterly until paid.

THE AMERICAN NATIONAL BANK,
By Thos. L. Kimball, Pres.

Attest: Henry F. Wyman, Cas.
Due Dec. 23, 1898.

No. 7399.
Endorsed on back as follows:
Int. paid to Mch. 23, 1896.
Int. paid to June 23, 1896.
Int. paid to Dec. 23, 1896.
4/16 Interest Paid to Mch. 23rd 1897.

March 16-1897 Paid on principal, $2000.00
2/8/00 Int. Pd to Aug. 6, 1897, 1500
5/12/00 Int. Pd. to Nov. 18, 1898, $5.m.
Nov. 7, 1990, Paid, J. B. Tres. $5000.00

399 EXHIBIT "6".

Regular Directors Meeting
Held December 10th 1895

Present: Mr. Thos. L. Kimball
Mr. A. U. Wyman
Mr. E. M. Morsman
Mr. Wm. Baird
Mr. A. R. Dufrene
Mr. Chas. C. George

The minutes of the meeting held November 19th were read and approved. On motion of Mr. Baird, seconded by Mr. George the following resolution was unanimously adopted.

Be it Resolved, That in accordance with the requirements of Article Eight (8) of the Articles of Association of The American National Bank of Omaha, Nebraska, the shareholders be notified that at the regular annual meeting of the shareholders of the Association which will be held at the office of said Association on the 14th day of January 1896, there will be submitted to them for their action the following:

Resolution to amend Article Three (3) of the Articles of Association of The American National Bank of Omaha, Nebraska. Be it Resolved, That Whereas the first sentence of Article Three (3) of the Articles of Association of The American National Bank of Omaha, Nebraska reads as follows, to-wit:

"The Board of Directors shall consist of nine (9) shareholders". The same be and hereby is amended so that it shall read "The Board of Directors shall consist of seven (7) shareholders."

On motion of Mr. Morsman, seconded by Mr. Wyman
400 the Reports of Loans and Discounts for the weeks ending November 16th, 23rd and 30th were read and approved.

The meeting adjourned.

THOS. L. KIMBALL, Pres.

Attest: Henry F. Wyman, Cas.

Copies of the following were mailed or delivered to each stockholder on December 11th & 12th 1895.

December 10th, 1895.

"To The Stockholders:

At a regular meeting held this day the Board of Directors of The American National Bank of Omaha, Nebraska, unanimously adopted the following resolution.

Be It Resolved That in accordance with the requirements of Article Eight (8) of the Articles of Association of The American National Bank of Omaha, Nebraska, the shareholders be notified at the regular Annual Meeting of the shareholders of the Association, which will be held at the office of said Association on the 14th day of January 1896, there will be submitted to them for their action, the following resolution to amend Article Three (3) of the Articles of Association of The American National Bank of Omaha, Nebraska.

Be It Resolved, That, Whereas the first sentence of Article Three (3) of the Articles of Association of The American National Bank of Omaha, Nebraska, reads as follows, to-wit:

"The Board of Directors shall consist of nine (9) share-
401 holders", That the same be, and hereby is amended so that it shall read "The Board of Directors shall consist of seven (7) shareholders".

Yours very truly,

HENRY F. WYMAN, Cashier,"
THOS. L. KIMBALL, Pres.

Attest: Henry F. Wyman, Cas.

402 EXHIBIT "7".

Special Directors Meeting,
Held December 21st, 1895.

Present: Mr. Thos. L. Kimball
" Wm. Baird
" Chas. C. George
" M. Levy
" A. R. Dufrene
" A. U. Wyman

The minutes of the meeting held December 10th 1895 were read and approved—

It was moved and seconded that the following resolution be adopted;

Whereas, the officers of this Bank and the officers of Union Natl. Bank of Omaha, Nebraska, have negotiated and agreed upon the sale of this Bank to the Union Natl. Bank of the business and assets of this Bank on the terms and conditions embodied in the agreement of which the following is a copy, to-wit:

"Agreement

This Indenture Witnesseth: That the American National Bank, a corporation of Omaha, Nebraska, hereinafter designated party of the first part, has and by these presents does hereby agree for the considerations hereinafter expressed to

and with Union National Bank, a corporation of Omaha, Nebraska, hereinafter designated party of the second part, as follows, to-wit:

First: The party of the first part hereby agrees to sell and assign and does hereby sell and assign to the second
403 part the business of the party of the first part, its cash on hand, office furniture and fixtures and such of its bills receivable as the party of the second part on examination may be willing to take as cash without recourse on the party of the first part.

Second: The party of the second part hereby agrees to purchase and does purchase from the party of the first part the business of the party of the first part, cash on hand, office furniture and fixtures, and such bills receivable as the party of the second part may be willing to take as cash on examination of the same without recourse on the party of the first part and to pay the party of the first part for said office furniture and fixtures the sum of Three Thousand Seven Hundred and Fifty ($3750.00) [—] and to assume the liabilities of the party of the first part to its depositors and on account of its bills payable and to liquidate the remaining assets of the party of the first part which may not be taken and received as cash by the party of the second part without charge or expense to the party of the first part, except such Court charges and attorney's fees as may be found necessary, and that such liquidation shall be conducted under the direction of Thomas L. Kimball or such other person as may be agreed upon on behalf of the stockholders of the party of the first part, it being understood and agreed that said Kimball or his successor shall represent in said liquidation the stockholders of the party of the first part, and shall receive, hold and use the proceeds of the assets of the party of first part as trustee of the parties hereto for the mutual protection of the rights of each in accordance with the terms and conditions of this agreement, and that all
404 necessary court charges and attorney's fees attending said liquidation shall be incurred under the direction of the said Kimball or his successor.

Third: In consideration of the above agreement of the party of the second part, the party of the first part hereby agrees to sustain and pay one-half of the loss and expense which the party of the second part may sustain on account of removal from its present quarters by reason of its unexpired lease on its present place of business, and one half of the loss which the party of the second part may sustain on the sale of its office furniture and fixtures, which furniture and fixtures are agreed upon at the present price and value of Three Thousand Seven

Hundred and Fifty ($3750.00) Dollars, and the party of the first part further agrees to guarantee and does hereby guarantee the party of the second part against any and all loss on account of assuming the liabilities of the party of the first part as aforesaid. And to this end the party of the first part agrees to execute and deliver to the party of the second part its three promissory notes of equal sums for the amount of liabilities which the party of the second part may assume after crediting the full amount of cash on hand and bills receivable and other assets which may be accepted by the party of the second part on examination, which notes shall draw interest from date at the rate of six per cent per annum payable quarter annually, and be payable in one, two and three years from date respectively, and shall be non-negotiable. And in case of non-payment of any of said notes when due, the whole of said principal sums of all of said notes and accrued interest shall thereupon become due.

465 And as further security to the party of the second part the party of the first part agrees to sell and assign and does hereby sell and assign to the party of the second part all of its assets which may remain after the selection therefrom by the party of the second part heretofore mentioned, including [al.] its bills receivable, stocks, bonds, personal property of every kind and all real estate and interests therein or liens thereon with the understanding and agreement that the party of the second part shall have and hold said assets and properties subject to the right of said Thomas L. Kimball or his successor to collect and convert the same into cash for the uses and purposes hereinbefore expressed.

And it is further agreed that the party of the first part may pay and have credited on said notes at any time prior to maturity any sums of money of Five Hundred ($500.00) Dollars and upwards, provided the sums so paid shall be in even hundreds.

Witness the names and corporate seals of the parties hereto this 21st day of December, A. D., 1895.

Now Therefore resolved, that the foregoing agreement be and the same is hereby ratified and confirmed and that the officers of this Bank be and are hereby authorized and directed to execute said agreement and carry the same into effect for and on behalf of this Bank, and that the officers of this Bank be and are hereby authorized to execute and deliver to the Union National Bank the notes of this Bank in the sums which

may be required to comply with the terms of the foregoing agreement.

406 The Resolution was unanimously adopted.

THOS. L. KIMBALL, Pres.

Attest: Henry F. Wyman, Cas.

407 EXHIBIT "8".

Regular Directors Meeting,
Held January 14th, 1896.

Present: Mr. Thos. L. Kimball
Mr. A. R. Dufrene
Mr. A. U. Wyman
Mr. M. Levy
Mr. Chas. C. George
Mr. Wm. Baird

On motion, Mr. Geo. G. Wallace, Mr. Alex G. Charlton and Mr. James I. Woodward were unanimously appointed Judges of Election to conduct the election to be held at the meeting of the stockholders on January 14th, 1896.

The meeting adjourned.

Attest: THOS. L. KIMBALL, Pres.

Henry F. Wyman, Cas.

408 EXHIBIT "9".

Annual stockholders meeting Held January 14th, 1896.

The following shares were represented in person:

10	shares	by	Wm. Baird
9	"	"	Alex G. Charlton
10	"	"	Alex. G. Charlton, Secty
10	"	"	James H. Conrad
75	"	"	A. R. Dufrene
5	"	"	John N. Frenzer
15	"	"	Chas. C. George
10	"	"	Thos. L. Kimball
50	"	"	Morris Levy
50	"	"	McCague Bros.,
287	"	"	John L. McCague
10	"	"	Thos. H. McCague
10	"	"	Chas. F. Manderson
6	"	"	C. W. Morton
56½	"	"	W. S. Poppleton
2½	"	"	Jas. I. Woodard
75	"	"	Geo. G. Wallace
58½	"	"	Henry F. Wyman

The following shares were represented by proxy:

	15	shares	by	M. C. Acheson by Alex G. Charlton
	5	"	"	J. J. Brown, Jr. " Randall K. Brown
	10	"	"	E. C. Brownlee by Alex G. Charlton
	25	"	"	R. L. Brownlee By Geo. G. Wallace
	22½	"	"	Rufus B. Bullock By John L. McCague
[409]	18	shares	of	Caroline Carpenter by John L. McCague
	7½	"	"	Viola Coffin by Jas. I. Woodard
	15	"	"	Peter Frenzer by John N. Frenzer
	5	"	"	Sarah A. Glenn by John L. McCague
	25	"	"	John H. Hawkins by Geo. G. Wallace
	10	"	"	Geo. Marples by John L. McCague
	75	"	"	E. M. Morsman by Alex G. Charlton
	1	"	"	Geo. Morton by C. W. Morton
	2	"	"	Jas. H. Morton by C. W. Morton
	1	"	"	Mary E. Morton by C. W. Morton
	615	"	"	National Bank Building Company of America by John C. Wharton
	10	"	"	T. R. Neal by J. H. Conrad
	15	"	"	J. E. Patrick by Robt W. Patrick
	10	"	"	W. A. Page by John L. McCague
	20	"	"	Wm. Wallace by John L. McCague
	10	"	"	A. U. Wyman by Geo. G. Wallace
	917			

In person	748. 3-4	
By proxy	917	
Total	1665 3-4	(In red ink)

For Report of Judges of Election see page 258)

On motion Mr. Thomas L. Kimball was elected chairman and Mr. Henry F. Wyman Secretary of the meeting. The minutes of the stockholders meeting held January 8th, 1895 were read, and on motion of General Manderson, seconded by Mr. Levy were approved.

410 Thirty days notice having been given the stockholders that the resolution would be offered, it was moved by Mr. Wharton and seconded by Mr. Dufrene that the following resolution be adopted;

Be It Resolved, That Whereas the first sentence of Article Three (3) of the Articles of Association of the American National Bank of Omaha, Nebraska, reads as follows, to-wit:

"The Board of Directors shall consist of nine (9) shareholders." That the same be and hereby is amended so that it shall read:

The Board of Directors shall consist of seven (7) shareholders."

It was moved by Mr. Patrick and seconded by General Manderson that the resolution offered be laid upon the table for the present.

The question was put, but the chairman was unable to determine the vote. General Manderson said he hoped that before any other business was brought before the meeting there would be made to the stockholders a statement of the circumstances which led up to the agreement with the Union National Bank. The Agreement entered into between the Directors of the American and Union National Banks was read.

Mr. Kimball made a statement of the conditions that confronted the American in December 1895 and the necessity for promptly taking advantage of the opportunity that offered whereby the depositors of the bank would be protected, the immediate obligations of the bank paid and time given the bank to realize on its assets.

411 General Manderson said that after investigation he was satisfied with the action of the Directors. Mr. Robert Patrick expressed himself to the same effect.

Mr. Dufrene, Mr. Baird, Mr. Levy, Mr. Wharton, Mr. Charlton and Mr. Thos. H. McCague were of the opinion that, under the circumstances the action of the Directors was for the best interests of the stockholders. Mr. Wharton, seconded by Mr. Dufrene moved to adopt the resolution, heretofore offered and withdrawn, to amend the Articles of Association. On motion of Mr. Patrick the Secretary was unanimously instructed to cast the ballots of the shares represented in favor of the Resolution.

The Secretary cast the ballots of the meeting for the resolution, which was announced carried.

Mr. Wharton moved that the meeting proceed to ballot for Directors. On motion of General Manderson, seconded by Mr. Patrick, the Secretary was unanimously instructed to cast the ballots of the shares represented for Thos. L. Kimball, A. R. Dufrene, Morris Levy, Wm. Baird, A. U. Wyman, Chas. C. George and Geo. G. Wallace for Directors.

The Secretary cast the ballots of the meeting for Messrs. Thos. L. Kimball, A. R. Dufrene, Morris Levy, Wm. Baird, A. U. Wyman and Chas. C. George and Geo. G. Wallace for Directors.

On motion of Mr. Baird seconded by Mr. Charlton the following resolution was adopted, the only vote in the negative being that of Mr. W. S. Poppleton who represented 56¼ shares.

412 Resolution.

Resolved, That the Directors of the American National Bank of Omaha, Nebraska, be, and hereby are instructed to take action looking to the liquidation required by law.

The meeting adjourned.

THOS. L. KIMBALL,
Chairman.

Attest:
Henry F. Wyman, Cas & Secty.

413 EXHIBIT "10".

Special Directors Meeting.

Held January 17th, 1896.

Present: Mr. Thos. L. Kimball
Mr. A. R. Dufrene
Mr. M. Levy
Mr. Wm. Baird
Mr. Chas. C. George

On motion Mr. Kimball was elected Chairman and Mr. Henry F. Wyman Secretary of the meeting.

All Directors elect present qualified as Directors and the meeting proceeded to the election of officers.

On motion the secretary was unanimously instructed to cast the ballots of the Directors for Mr. Thos. L. Kimball for President, for Mr. A. R. Dufrene for Vice-President and for Mr. Henry F. Wyman for Cashier.

The Secretary cast the ballots of the Directors for Mr. Thos. L. Kimball for President, for Mr. A. R. Dufrene for Vice-President and for Mr. Henry F. Wyman for Cashier.

It was unanimously decided to leave vacant the position of Assistant Cashier, and to defer to a subsequent meeting the appointment of committees.

The minutes of the directors meetings held December 21st 1895 and January 14th, 1896 were read and approved. On motion of Mr. Baird, seconded by Mr. Dufrene, the following resolution was unanimously adopted:

Resolved, That a meeting of the shareholders of The American National Bank of Omaha, Nebraska, be called for the 25th

day of February 1896 for the purpose of considering
414 and voting upon the following Resolution, to-wit:

Resolved, That The American National Bank of Omaha, Nebraska, be placed in voluntary liquidation under the provisions of Sections 5220 and 5221 U. S. Revised Statutes, to take effect the 25th day of February, 1896. And that Thos. L. Kimball be, and hereby is appointed the agent and trustee of the shareholders of said Bank to effect such liquidation.

The meeting adjourned.

THOS. L. KIMBALL, Pres.

Attest:

Henry F. Wyman, Cas.

415 EXHIBIT "11".

The American National Bank,
Omaha, Nebraska.

January 17th, 1896.

To The Shareholders:

At the Annual Meeting of the Shareholders of this Bank held January 14th, 1896, It was

"Resolved, That the Directors of The American National Bank of Omaha, Nebraska, be and hereby are instructed to take action looking to the liquidation required by law".

Acting under these instructions the Directors have this day called a meeting of the Shareholders for the 25th day of February 1896, for the purpose of considering and voting upon the following:

Resolution:

"Resolved, That The American National Bank of Omaha, Nebraska, be placed in voluntary liquidation, under the provisions of Sections 5220 and 5221, U. S. Revised Statutes, to take effect the 25th day of February 1896, and that Thos. L. Kimball be, and hereby is, appointed the agent and trustee of the Shareholders of said Bank to effect such liquidation."

It is desired that each Shareholder be personally present or represented by proxy, at the called meeting. No Officer or Director of the Bank can act as proxy, and it is suggested that Mr. John L. McCague or Mr. Alex G. Charlton are eligible to vote your stock.

Requesting your presence or representation at the meeting we remain

Respectfully,

416 THOS. L. KIMBALL
A. R. DUFRENE
M. LEVY
A. U. WYMAN Directors.
WM. BAIRD
CHAS. C. GEORGE
GEO. G. WALLACE

This day, Jan. 20th, 1896 copies of this notice were mailed or delivered to all stockholders.

HENRY F. WYMAN, Cas.

417 EXHIBIT "12"

Report of the Judges of Election.

(in red ink)

(Copy) Omaha, Jan. 14th, 1896.

Dear Sir: We the undersigned, a committee of the stockholders of The American National Bank of Omaha, appointed by the Board of Directors of said Bank to conduct the annual election of Directors of said Bank certify and report to the Cashier of said Bank that on the fourteenth day of January 1896, between the hours of three and five in the afternoon of said day after due notice had been given to the stockholders of said Bank, they did hold said election and as a result thereof, there were cast the following ballots for Directors for the year next ensuing, Sixteen hundred sixty-five and 3-4 (1665 3-4) votes for each of the following: Thos. L. Kimball, Morris Levy, William Baird, A. U. Wyman, A. R. Dufrene, Chas. C. George and George G. Wallace, being a majority in interest of the stockholders of said Bank.

Therefore, we declare the election as Directors of The American National Bank of Omaha, Nebraska, for the ensuing year, the following named stockholders, Thomas L. Kimball, William Baird, A. R. Dufrene, Morris Levy, A. U. Wyman, George G. Wallace, Chas. C. George.

G. G. WALLACE,
To Henry F. Wyman, Cashier ALEX G. CHARLTON,
American National Bank, J. I. WOODARD,
Omaha, Nebr. Judges of Election.

Attest: Henry F. Wyman, Cas.

418 EXHIBIT "13".

Special Directors Meeting.

Held February 25th, 1896, for the purpose of appointing Tellers to receive and report the votes to be cast at the Special Meeting of the stockholders called for February 25th, 1896.

Present: Mr. Thos. L. Kimball
Mr. A. R. Dufrene
Mr. M. Levy
Mr. Wm. Baird and
Mr. A. U. Wyman.

On motion of Mr. Levy seconded by Mr. Baird, Mr. J. H. Conrad and Mr. C. W. Morton were unanimously appointed such Tellers.

The meeting adjourned.

THOS. L. KIMBALL, Pres.

Attest: Henry F. Wyman, Cas.

419 EXHIBIT "14".

Special Stockholders Meeting.

On February 25th, 1896, the Stockholders of The American National Bank met in the parlors of said Bank in pursuance of the notice appearing on page 257 of these records.

The meeting was called to order by Mr. Thos. L. Kimball, President of the Bank.

On motion of Mr. E. M. Morsman, seconded by Mr. A. R. Dufrene, Mr. Thos. L. Kimball was unanimously elected Chairman and Mr. Henry F. Wyman Secretary of the meeting.

Mr. Wm. Baird moved the adoption of the following

Resolution:

"Resolved, That The American National Bank of Omaha, Nebraska, be placed in voluntary liquidation, under the provisions of Sections 5220 and 5221, U. S. Revised Statutes, to take effect the 25th day of February 1896, and that Thos. L. Kimball be, and hereby is appointed the agent and trustee of the Shareholders of said Bank to effect such liquidation."

Mr. A. R. Dufrene seconded the motion of Mr. Baird. The motion for the adoption of the Resolution was put by the

Chairman to a vote of the stock represented, and the vote was as follows:

Votes represented in [perfor]. For the resolution,

Number Shares	Voted by
15	Acheson M. C.
10	Baird Wm.
10	Brownlee E. C.
9	Charlton Alex G.
20	Charlton, Secy. Alex G.
10	Conrad James H.
[420] 75	Dufrene A. R.
10	Kimball Thos. L.
50	Levy Morris
50	McCague Bros.,
287	McCague John L.
25	McCulloch James H.
75	Morsman E. M.
5	Morton C. W.
50	Smith Howard B.
2¼	Woodard James I.
10	Wyman A. U.
58¼	Wyman Henry F.
772½	

Votes represented by proxy. For the Resolution:

Number of Shares.	Owned by	Voted by
5	Brown, Jr. J. J.	R. K. Brown
22½	Bullock Rufus B.	John L. McCague
18	Caroline Carpenter	John L. McCague
7½	Coffin Viola	Jas. I. Woodard
9¾	Crowell Anna C.	John L. McCague
5	Flack Arthur H.	John F. Flack
50	McClellan R. H.	John L. McCague
5	McConnell Trustee, F. R.	John L. McCague
10	Marples Geo.	John L. McCague
2	Morton Jas. H.	C. W. Morton
1	Morton Mary E.	C. W. Morton
615	National Bk Bldg. Co.	John C. Wharton
10	Neal T. R.	J. H. Conrad
1½	Robinson Emily J.	Alex G. Charlton
10	Speer John	John L. McCague
75	Wallace Geo. G.	Howard B. Smith
20	Wallace Wm.	John L. McCague
867¼		

421 Votes represented in person. Against the Resolution—

Number of shares	Voted by
56¼	Poppleton W. S.

Total stock represented and voted as follows:

For Resolution, in person	772½
For resolution by proxy	867¼
Total for resolution	1639 3-4
Against Resolution	56¼
Total shares voted	1696

Total Capital stock of the bank 2000 shares
Two-thirds necessary to adopt resolution 1333 1-3 "

It appearing that more than two-thirds of the Capital stock had voted in favor of the Resolution, the Chairman declared the Resolution adopted.

Thereupon the meeting adjourned.

THOS. L. KIMBALL, Chairman.

Attest:

Hneyr F. Wyman, Secy.

422 EXHIBIT "15".

Copy of Teller's Report.

Omaha, Nebr. Feby 25th, 1896.

Henry F. Wyman, Cashier,
American National Bank,
Omaha, Nebr.

Dear Sir:—

We, the undersigned, a committee of the stockholders of The American National Bank of Omaha, appointed by the Board of Directors of said Bank to act as Tellers at the meeting of the stockholders held this day, certify and report to the Cashier of said Bank, that on this 25th day of February 1896 after due notice had been given to the stockholders of said Bank, a meeting of the stockholders was duly held, and as a result thereof there were cast in favor of the following resolution sixteen hundred thirty-nine and 75-100 (1639 75-100) votes; Seven hundred twenty-two and 50-100 (722 50-100) votes being represented in person and nine hundred seventeen and 25-100 (917 25-100) votes being represented by proxy, and against the following resolution, Fifty-six and ¼ (56¼) votes.

Total votes 1696

Resolution.

"Resolved: That The American National Bank of Omaha, Nebraska, be placed in voluntary liquidation under the provisions of sections 5220 and 5221 U. S. Revised Statutes, to take effect the 25th day of February 1896, and that Thomas L. Kimball be and hereby is appointed the agent and trustee of the Shareholders of said Bank to effect such liquidation."

423 Two-thirds of the stock having voted in favor of the above resolution, we hereby declare the same adopted.

(Signed) CHARLES W. MORTON,
JAMES H. CONRAD,
Tellers.

Attest:
Henry F. Wyman, Cas.

424 EXHIBIT "16".

Special Directors Meeting.

Held February 27th, 1896.

Present: Thos. L. Kimball
A. R. Dufrene
A. U. Wyman
Wm. Baird

The minutes of the meeting held January 17th and 25th 1895 were read and approved.

On motion the Cashier was instructed to subscribe his name and affix the seal of the Association to the following:

"Certificate for Voluntary Liquidation

No. 4087.

American National Bank,
Omaha, Nebr. Feby. 27th, 1896.

To the Comptroiler of the Currency,
Washington, D. C.

Sir:—

It is hereby certified in pursuance of Sections 5220 and 5221 of the Revised Statutes of the United States, that at a meeting of the stockholders of The American National Bank, located at Omaha, in the State of Nebraska, duly notified and held pursuant to law and the Articles of Association of said Bank at the office of said Association at Omaha, Nebraska, aforesaid on the 25th day of February, 1896, it was voted by the stockholders of said Association, owning two-thirds of its stock, that said Association go into liquidation and be [cloased].

425 In Testimony Whereof, I have, by instruction of the Board of Directors of said Association hereto subscribed my name and affixed the seal of said Association at Omaha, Nebraska, aforesaid, the day and year above written.

Cashier.

Notice.

The American National Bank located at Omaha in the State of Nebraska is closing up its affairs. All note holders and others creditors of said Association are therefore notified to present the notes and other claims against the Association for payment.

Cashier.

"Dated Omaha Neb. Feb 27th 1896".

On motion the following Resolution was unanimously adopted.

Resolved, That the Comptroller of the Currency be and he is hereby authorized to withdraw $50,000.00 U. S. Bonds, deposited with the Treasurer of the United States by this Bank to secure circulation and described as follows:

$50,000.00 of the Loan of 1907 Four Per Cent Consols, and that the First National Bank of the City of New York be, and is hereby authorized to sell, assign and transfer the same and to appoint one or more attorneys for that purpose.

THOS. L. KIMBALL, Pres.

The meeting adjourned,
Attest: Henry F. Wyman, Cas.

426 EXHIBIT "17".

(Letter from American National Bank to Comptroller of the Currency under date of April 23rd 1896."

Thos. L. Kimball, President,	Henry F. Wyman, Cashier
A. R. Dufrene, Vice-President	E. C. Brownlee Asst. Cashier.

The American National Bank,
Omaha, Apr. 23, 1896.

Hon. James H. Eckels,
Comptroller of the Currency,
Washington, D. C.

Sir: Our directors have not yet received from you formal consent to the liquidation of this bank, in accordance with the decision reached by you in our interview of the fifteenth in-

stant, and I have been instructed to ask of you such formal consent, in order that it may be incorporated in the banks records.

Respectfully yours,

(Signed) HENRY F. WYMAN, Cashier.

427 EXHIBIT "18".

(Letter from Comptroller of the Currency to American National Bank under date of April 27th, 1896."

Treasury Department

Ao-

Office of the Comptroller of the Currency.

Washington, D. C., April 27, 1896.

Address reply to "Comptroller of the
Currency" Washington, D. C.
V. H. C.
E. S.
Mr. Henry F. Wyman,
Cashier, American National Bank,
Omaha, Nebraska.

Sir: Your letter of 23rd has been received, in further reference to the liquidation of your association.

You are respectfully advised that the papers have been placed on file, my approval being given to the liquidation of the bank.

Very respectfully,
JAMES H. ECKLES, Comptroller.

(Stamped)
American Nat'l Bank,
Apr 30 1896
Omaha, Nebraska.

428 EXHIBIT "19".

(Duplicate Proof of Publication, Omaha Mercury, June 26, 1896, Publisher's Fee $6.85.

Duplicate

Proof of Publication.

U. S. America
The State of Nebraska
Douglas County,
City of Omaha—ss.

Charles E. Duffie being du'y [sowrn], deposes and says that he is the Editor of the Omaha Mercury, a weekly newspaper, printed, published and circulated every Friday in the City of

Omaha, Douglas County, and State of Nebraska, and that said Notice attached hereto was published in said Omaha Mercury in each issue thereof for ten consecutive weeks, the first date being April 24, 1896, and the last date of publication being June 26, 1896.

That said newspaper has a bona fide circulation of more than 200 copies weekly, and has been printed and published at Omaha, within said County, for more than 52 successive weeks prior to the publication of said notice.

That said Omaha Mercury was, during the time, in general circulation in the County of Douglas and the State of Nebraska.

Signed CHAS. E. DUFFIE.

Subscribed in my presence and sworn to before me this 26 day of June 1896.

[Seal] ERNEST I. YOUNG,
Notary Public in and for
Douglas County, Nebraska.

429 Notice. The American National Bank, located at Omaha in the State of Nebraska, is closing up its affairs. All note holders and others, creditors of said Association, are therefore hereby notified to present the notes and other claims against the Association for payment.

HENRY F. WYMAN, Cashier.

Dated Omaha, Nebraska, February 27, 1896.

(Stamped)
Paid The Omaha Mercury.

430 EXHIBIT "20".

Publishers Certificate, American Banker.

July 8th, 1896.

Publisher's Certificate.

Anthony Stumpf being duly sworn, states, that he is a member of the firm of Stumpf & Steurer, publishers of The American Banker, a weekly financial publication, published in New York City, and further states that the attached Notice of Liquidation was published for the period of two months from April 29 to June 29 1896, in the above named periodical as required by law. ANTHONY STUMPF.

Sworn and subscribed to before me, this the 8th day of July 1896. FRANCES G. HAINES,
Notary Public.
N. Y. Co.

Notice:—The American National Bank located at Omaha, in the State of Nebraska, is closing up its affairs. All note-holders and others, creditors of said association, are therefor hereby notified to present the notes and other claims against the association for payment.

HENRY F. WYMAN, Cashier.

Dated, Omaha, Neb. Feb. 27th, 1896.

431 EXHIBIT "21".

Treasury Department

Office of the Comptroller of the Currency

L & M Washington, D. C. July 20, 1896. Ao

Address Reply to Comptroller of the Currency, Washington, D. C.

HV E. S.

Mr. Henry F. Wyman,
Cashier, American National Bank
Omaha, Nebraska.

Sir:—

Your letter of the 13th instant has been received in reference to the publication of notice concerning the liquidation of your bank, in the American Banker of the City of New York.

You are respectfully informed that proof of publication was received from the publisher on the 9th instant.

JAMES H. ECKELS, Comptroller.

(Stamped)

American Nat'l Bank
Jul 23 1896
Omaha, Nebraska.

432 EXHIBIT "22".

Acknowledgment of Deposit in Liquidating Account.

Treasury of the United States,

T E R Washington May 4 1896.

$45,000

Sir:—

For a deposit of lawful money of the United States, made under Section 5222 of the Revised Statutes for the redemption of your circulation, I have this day credited your Bank in

Liquidating Redemption Account Forty-five thousand Dollars, and have issued this acknowledgment in duplicate.

Respectfully yours,

J. K. MELINE,
Assistant Treasurer U. S.

Cashier

American National Bank
Omaha, Nebr.

(Stamped)

American Nat'l Bank,
May 7 1896
Omaha, Nebraska.

433 EXHIBIT "23".

Annual Stockholders Meeting.

Held January 8th, 1895, at three o'clock in the afternoon.

Stock to the aggregate amount of 1515½ shares were represented and voted as follows:

No. Shares.	Owned by
50	W. L. McCague
10	E. C. Brownlee
75	A. R. Dufrene
75	G. G. Wallace
15	C. C. George
15	Peter Frenzer
5	J. N. Frenzer
25	J. H. McCulloch
6	C. W. Morton
58¼	H. F. Wyman
10	Wm. Baird
287	Jno. L. McCague
50	M. Levy
50	McCague Bros
10	Thos. L. Kimball
10	A. G. Charlton, Secy.
751¼	

The following shares were represented by proxies:

No. Shares	Owned by	Voted by
50	Robt. McClellen	W. L. McCague
3 3-4	Frank Graham	C. C. George
5	J. J. Brown, Jr.	Wm. L. McCague
10	A. U. Wyman	G. G. Wallace
25	R. L. Brownlee	W. L. McCague

[434]

18	Caroline Carpenter	W. L. McCague
5	A. H. Flack	John F. Flack
600	Nat. Bank Bldg. Co.	W. L. McCague
25	Wm. Minot Jr.,	W. L. McCague
22½	R. B. Bullock	W. L. McCague
764½		
Total votes cast		1515½

The judges of Election Mess. Geo. G. Wallace and Charles W. Morton made a report to the Cashier of which the following is a copy.

Omaha, January 8th, 1895.

"Dear Sir:—

We the undersigned, a Committee [od] the stockholders of the American National Bank of Omaha, appointed by the Board of Directors of said Bank to conduct the annual Election of Directors of said Bank, would certify and report to the Cashier of said Bank, that, on the 8th day of January 1895, at the office of said Bank in Omaha, between the hours of three and five o'clock in the afternoon of said day, after due notice had been given to the stockholders of said Bank, by publication, they did hold said election, and, as a result thereof, there were cast for the following persons to act as Directors of said Bank, for the year next ensuing:

Thos. L. Kimball	1515½ votes	Wm. Baird		1515½
A. U. Wyman	1515½ "	John L. McCague		1515½
E. M. Morsman	1515½ "	W. A. Page		1515½
Morris Levy	1515½ "	Chas. C. George		1515½
		A. R. Dufrene		1440½

being a majority in interest of the stockholders of said Bank.

435 Therefore we declare the Election as Directors of the American National Bank of Omaha, Nebraska, for the ensuing year, the following named persons:

Thos. L. Kimball
A. U. Wyman
E. M. Morsman
Morris Levy
Wm. Baird
John L. McCague
W. A. Page
Chas. C. George
A. R. Dufrene

GEO. G. WALLACE,
CHARLES W. MORTON,
Judges of election.

To Henry F. Wyman, Cashier,
American National Bank, Omaha, Nebraska.

The Directors elect were notified of their election and a meeting was called for Saturday afternoon, January 12th at three o'clock for the purpose of organizing the new Board.

THOS. L. KIMBALL,
Pres.

Attest:
Henry F. Wyman, Cas.

436 EXHIBIT "24"

Regular Stockholders Meeting.

On January 12th 1897 the stockholders of the American National Bank met at No. 1504 Dodge Street in Omaha, Nebr., in pursuance of notice. The meeting was called to order by Mr. A. R. Dufrene, vice-president of the bank. On motion of Mr. Baird, seconded by Mr. George Mr. Dufrene was unanimously elected chairman of the meeting.

On motion of Mr. George, seconded by Mr. Wharton, Mr. Henry F. Wyman was unanimously elected secretary of the meeting.

The minutes of the stockholders meetings held January 14th 1896 and February 25th, 1896, were read and approved. The following report was read and on motion of Mr. George, seconded by Mr. Baird, was received and ordered [apread] upon the records.

Omaha, Nebr.
Jan. 12th, 1897.

To the stockholders:

I beg to submit for your consideration a condensed statement comparing the condition of the American National Bank on December 21st 1895 (its last day of active business) with the condition on January 1st, 1897.

Liabilities	Dec. 21, 1895	Jan. 1, 1897
Capital	200,000.00	200,000.00
Circulation	45,000.00	
Deposits	239,947.69	
Bills Payable	50,000.00	184,000.00
Bills Rediscounted	4,880.64	
Overdraft with Union National Bank		99.85
	539,828.33	384,099.85

437 Resources:		
Loans and Discounts	307,080.51	245,918.54
Overdrafts	3,000.59	
U. S. Bonds	50,000.00	
Premium on bonds	5,500.00	
Stocks, Securities, Claims, [etx.]	47,099.91	51,394.63
Furniture and Fixtures	7,500.00	
Real Estate owned	43,282.42	54,980.97
Cash, Sight Exchange and Cash Items	62,085.50	
Cash Item (in litigation)		5,000.00
Five Per cent Fund	2,250.00	
Profit and Loss	12,029.40	26,805.71
	529,828.33	384,099.85

It will be observed that aside from Capital Stock and Circulation, the Liabilities of the Bank have been reduced from $294,828.33 to $184,000.00.

The cash expenditures since the Bank entered upon liquidation have aggregated $60,294.23 as follows:

Payment of Liabilities incurred prior to Liquidation	$22,799.90
Payment of Expenses " " "	4,985.99
Payment of principal and interest to Union Nat. Bank	22,815.40
Payments since Liquidation to carry Real estate	4,738.65

Payment of expenses since Liquidation as follows:

Salaries	$2,639.96	
Attorneys fees	85.55	
Advertising, postage, fitting up vault expenses to Washington, etc.,	439.92	
One-half rent old Union Nat. Bank quarters	1,788.86	4,954.29
		$60,294.23
The collections have aggregated		60,194.38
Overdrawn account		99.85

It has been deemed advisable not to endeavor to enforce many claims by recourse to law, both on account of the expense [anf] the probability of a longer delay in collecting.

The remaining assets of the Bank are largely based upon real estate securities, and under existing conditions liquidation proceeds slowly. In order to work out the best results they

should continue to have close attention until such time
438 as the real estate can be sold and the other assets turned into cash.

Respectfully submitted,

HENRY F. WYMAN, Cashier.

Approved: THOS. L. KIMBALL, Trustee.

On motion of Mr. Wharton, seconded by Mr. Baird, the Secretary was instructed to cast the ballots of the shares represented for Mr. Thos. L. Kimball, Mr. A. R. Dufrene, Mr. Wm. Baird, Mr. M. Levy, Mr. A. U. Wyman, Mr. Chas. C. George and Mr. Geo. G. Wallace for Directors for the ensuing year. The Secretary cast the ballots of the shares represented for Mr. Thos. L. Kimball, Mr. A. R. Dufrene, Mr. Wm. Baird, Mr. M. Levy Mr. A. U. Wyman, Mr. Chas. C. George and Mr. Geo. G. Wallace for Directors for the ensuing year, who were declared duly elected.

The shares represented and voted were as follows:

Represented in person

10	by Wm. Baird
9	" Alex G. Charlton
20	" Alex G. Charlton, Secy.
10	" James H. Conrad
75	" A. R. Dufrene
15	" Chas. C. George
50	" McCague Bros.
10	" Thos. H. McCague
[439] 25	" J. H. McCulloch
6	" C. W. Morton
75	" Geo. G. Wallace
2¼	" Jas. I. Woodard
58¼	" Henry F. Wyman
365½	Total

Represented by proxy:

15	of M. C. Acheson by Alex G. Charlton
25	R. L. Brownlee by Geo. G. Wallace
18	Caroline Carpenter by John C. Wharton
10	Thos. L. Kimball by Alex G. Charlton
287	John L. McCague by Alex G. Charlton
50	R. H. McClellan by J. H. McCulloch
10	Geo. Marples by Thos. H. McCague
forwarded, 415	
75	of E. M. Morsman by John C. Wharton
625	" National Bank Bldg. Co. by John C. Wharton

10	John Speer by J. H. McCulloch
20	Wm. Wallace by John C. Wharton
11¼	Meade C. Williams by Alex G. Charlton
10	A. U. Wyman by John C. Wharton
1166¼	Total
365½	shares represented in person
1166¼	" " by proxy
1531¾	Total shares represented

The meeting adjourned

A. R. DUFRENE, Chairman.

Attest: Henry F. Wyman, Cas & Secy.

440 COPY OF EXHIBIT "25".

The undersigned, owners of the number of shares of the Capital Stock of the American National Bank of Omaha, set opposite our respective names, hereby ratify and confirm the action of the Directors of The American National Bank of Omaha in entering into and executing a certain agreement between said American National Bank and The Union National Bank of Omaha, a copy of which agreement is hereto attached:

Names.	Number of Shares.
National Bank Bldg. Co. of Amer. by John C. Wharton, Atty in fact.	Six hundred and fifteen shares.
Thos. L. Kimball	Ten Shares.
Wm. Baird	Ten shares.
E. C. Brownlee	Ten shares.
Alfred R. Dufrene,	Seventy-five Shares.
Anna C. Crowell, By Thos. H. McCague, Atty. in fact.	Nine 3/4 Shares
Thos. H. McCague,	Ten Shares.
McCague Bros.	Fifty Shares.
John L. McCague	Two hundred Eighty-seven shares.
William L. McCague By John L. McCague, Atty. in fact,	Fifty Shares.
E. M. Morsman,	Seventy-five Shares.
Alex. G. Charlton,	Nine Shares.
Alex. G. Charlton, Secy.	Ten Shares
J. J. Brown, Jr.,	Five Shares.
Henry F. Wyman,	Fifty-eight and 1/4 Shares.

[441]

Names.	Number of Shares.
Morris Levy	Fifty Shares.
A. U. Wyman,	Ten Shares.
George G. Wallace,	Seventy-five Shares.
M. C. Acheson	Fifteen Shares.
Charles W. Morton,	Six Shares.
James H. Morton,	Two Shares.
Mary E. Morton,	One Share.
George Morton,	One Share.
Jas. H. Conrad,	Ten Shares.
Chas. C. George,	Fifteen Shares.
T. R. Neal,	Ten shares.
George Marples,	10.

(Attached to said Exhibit is Agreement, copy of Exhibit "1" in this case.)

442 EXHIBIT "27".

Minutes of adjourned Regular Meeting held Aug. 8, 1898, in the office of the Bank.

Present W. W. Marsh, A. R. Dufrene, W. A. Smith, J. H. Macomber, G. W. Wattles.

Moved by G. W. Wattles, seconded by W. A. Smith, that the President and Cashier be, and are hereby, authorized to execute on behalf of the Bank the following assignment:

"For value received The Union National Bank hereby sells and assigns to Sumner Wallace, the note hereto attached of the American National Bank dated Dec. 23rd, 1895, on which there is a balance of principal of Thirty-seven thousand and seven hundred and sixty-five dollars due and unpaid, including in this sale and assignment the proportionate interest which is represented by said note in the assets of the American National Bank which are held by Thomas L. Kimball, Trustee, as security for said promissory notes and the other notes of the American National Bank under the agreement between said American National Bank and Union National Bank dated 21st day of December, A. D. 1895.

Witness the name and corporate seal of the Union National Bank this 8th day of August, 1898."

Above motion carried unanimously.

Moved, seconded and carried that meeting adjourn.

J. W. THOMAS, Cas.

443 EXHIBIT "28".

Minutes Regular Meeting of Board of Directors held August 2, 1898, in the banking office.

No quorum present.
Meeting adjourned to Monday Aug. 8, 1898.

J. W. THOMAS, Cas.

444 EXHIBIT "29".

Minutes of Special Meeting of Board of Directors of this Bank held on April 21, 1898.

Present W. W. Marsh, T. L. Kimball, A. R. Dufrene, G. W. Wattles, J. H. Macomber.

Minutes of last meeting read and approved.

Whereas, at a meeting of the Board of Directors of this Bank held on Jan. 6th, 1898, at which the following Directors were present, to-wit, W. W. Marsh, T. L. Kimball, G. W. Wattles, A. R. Dufrene, W. A. Smith, J. H. Macomber and Chas. Marsh, a motion was made and carried that the following resolution be voted, to-wit:

"Whereas, The Union National Bank holds the assets of the American National Bank as security for notes of said American National Bank, which is insolvent, and is desirous of obtaining payment of same: and

Whereas, certain stockholders in said American National Bank have agreed, or may hereafter agree, to subscribe an amount equal to the par value of stock held by them respectively, to be paid Thomas L. Kimball, Trustee, to be held by him in furtherance of this purpose:

Voted, That this bank agrees to and with each and all of said subscribers so paying the full amounts to which they would respectively be liable upon assignment, that no advantage shall be taken of this as a voluntary prepayment before judgment, but, that upon judgment being obtained, this Bank will release or cause to be released, the stockholder from
445 all liability thereunder, and doth hereby guarantee each and every subscribing stockholder making payment in full, against any second payment, or any part of any second payment, under any judgment which may be obtained:

Voted, That said notes be assigned to Sumner Wallace, in order that proper legal proceedings may be undertaken in his name to forward the mutual interests of this Bank, and of Thomas L. Kimball, Trustee, representing such subscribers, to the end that this Bank shall be first paid, and that the sub-

scribers shall receive from the proceeds of such assets, and from sums collected from other stockholders in the American National Bank who fail to subscribe, the surplus:

Voted, That it is understood that the trustee holding such subscriptions and proceeds, may at discretion withhold from payment to this Bank from time to time, such reasonable sums as may be needful to meet fixed charges, such as taxes, interest on prior liens, &c., and to prevent a forced sacrifice of the assets in his hands."

Resolution.

And it appearing that by oversight a record of said meeting has not been made, therefore, moved by J. H. Macomber, and seconded by Thos. L. Kimball, that the record of said meeting be now entered upon the records of the Bank—

Carried. Upon motion made, seconded and carried meeting adjourned.

J. W. THOMAS, Cashier.

446 EXHIBIT "30, page 1.

Omaha, Neb., October 8th, 1899.

Statement of the condition of The American National Bank, of Omaha, from the commencement of liquidation to date.

	Dec. 21, 1895.	October 8, 1899.
LIABILITIES.		
Capital,	200,000.	200,000.
Circulation,	45,000.	
Deposits,	239,947.69	
Bills Payable,	50,000.	167,765.
Bills Re-discounted	4,880.64	
	$539,828.33	$367,765.00
RESOURCES.		
Loans & Discounts,	307,080.51	205,847.32
Overdrafts,	3,000.59	
U. S. Bonds,	50,000.	
Premium on Bonds,	5,500.	
Furniture and Fixtures,	7,500.	
Stocks, Securities, Claims, &c.,	47,099.91	50,027.58
Real Estate,	43,282.42	64,397.43
Cash, sight exchange and cash items,	62,085.50	2,219.52
Five Per Cent. fund,	2,250.	
Profits & Loss,	12,029.40	45,273.15
	$539,828.33	$367,765.00

COLLECTIONS.		
To January 1st 1897,—not itemized,		60,194.38
Since above date:—Loans & Discounts,	24,234.82	
Interest & Discounts,	3,295.36	
Real Estate, Sale of,	2,843.48	
" " Rents, &c.,	3,516.90	
Profit & Loss	1,806.84	
Cash Item (Previously in litigation)	4,000.	
City Warrants,	342.82	
Stocks, Securities &c. (Judgments)	1,411.70	57,158.39
" " (Bonds &c.)	15,706.47	
		$117,352.77
EXPENDITURES.		
Liabilities prior to liquidation,	22,799.90	
Expenses " " "	4,985.99	
Principal Union Nat. Bank, Notes 1-2 & 3,	33,235.	
Interest " " " to March 23, 1897,	14,095.40	
Real estate, acquired,	7,284.30	
" taxes,	3,994.57	
" Interest on mortgages, including monthly payments on property in Griffen & Smith's Addition,	8,256.98	
Repairs, etc.,	361.05	
Expenses, Salaries,	4,639.96	
Half rent old quarters of Union,	3,538.82	
Attorneys fees,	2,114.93	
Court costs,	678.04	
Advertising, Printing & Postage,	544.17	
Sundries,	89.98	
Profit & Loss,	8,514.16	
Cash on hand,	2,219.52	
		$117,352.77

447 EXHIBIT "30", page 2.

Loans and Discounts.

American Tailors,	230.98
Bartlett, M. S.	225.
Barton, W. P.	212.17
Blackburn, W. C.	467.
" T. W.	275.
Brewster, C. M.	23.
Bell, E. E. J.	3,000.
Brennan, W. P. & Ruth H.	500.
Bush, E. J.	15.
Beebe, S. S. & Cath. H.	64.
Brownlee, T. C. & H. R. Vandecar.	5.00
Barkalow, N. E. & S. D.	650.
" N. E.	3,436.
Bartlett, E. C. & M. J.	5,495.25
Berlin, R. S.	2,593.22
Benawa & Co.,	875.
Clark, A. M. & W. F.	25.70
Collins, D. J.	50.
Charlton, Paul	350.
Cooley & Stutzer,	3,959.57
Cooley, Laura J. & A. H.	5,995.
Charlton, Alex G.	3,408.80
Cushing, Luther S.	5,447.03
Cutler, F. E.	325.

Chamberlain, H. L.	229.	
Colby, C. J.	135.	
Cooper, Geo. M.	150.	
~~Clapp, Chas. E. & W. N. Williams,~~	~~776.~~	settled
Curtis, S. S. & C. E.	1,200.	
" S. S.	2,500.	
" S. S.	90.	
" S. S. & F. J. Sackett,	2,639.48	
" " " " " "	274.50	
Doud, H. A.	250.	
Darling, F. K.	25.	
"	390.	
Dumont, J. H.	2,000.	
Dawson Brick Co.,	3,700.	
Elgutter, C. S.	400.70	
"	3,000.	
Fawcett, Jacob	2,500.	
"	39.	
Flack, Jno. F. & Carrie J.	10,907.20	
Flack Co. Jno. F.	3,276.37	
Fitch, Wm.	1,680.	
Ford & Charlton Music Co.,	1,249.74	
Fitch, Wm. Bay, J. P. & A. H. Cooley,	550.	
Faist, Louis,	600.	
Gould, H. B.	305.	
" M.	385.	
" M.	47.35	
" M. & Geo. S.	350.	
" M. & Wilson S.	450.	
Gaston, J. Q.	55.05	
Gadd, E. T. and W. L. McCague,	75.	
Gratton, W E. & Ella E.	586.	
Gridley, F. P.	95.	
Grebe, Hy. & Wm. Coburn,	44.24	
" Hy. & Louis,	22.28	
Hunt, G. J.	2,250.	
Hoopes, Willis I.	1,500.	
Herdman, R. E.	217.	
Holbrook, B.	2,093.57	
"	1,673.55	
Hale, O. H. P.	800.	
Haman, C. F. & H. F.	1,310.	
Henderson, Ida M. and Hallet H.	2,200.	
Harrison, C. F. & Chas. A. Goss,	478.20	
Forward	91,025.95	

448 EXHIBIT "30", Page 3.

L. & D. No. 2, Br't Forward,	91,025.95
Hanighen, J. J.	203.84
Interior Land & Im. Co.,	1,657.50
Joplin, Geo. A.	84.25
Johnson, Anthony & J. A. Lovegren,	263.80
Irvine, Frank	250.
Jessen, Kirstine	10.
Johnson, F. B.	1,700.
Johnson, Chas. & Elizabeth,	75.
Knight Bros. & Barnes,	390.64
Knox, E. B.	265.35
Kennedy, J. G.	75.
Lees, Stewart D.	31.50
Limback, H. F.	184.
Lobeck Mdse. Co., B. Holbrook,	560.51

Lewis, J I.	506.99	
"	750.	
McMahon, E. R.	1,958.66	
Miller, W. R.	34.30	
Mallender, J. P.	515.	
Mo. Val. Grain Co. W. B. & J. B. Christian,	331.60	
Monitor Hard Plas'er Co., A. K. Walla,	500.	
Marshall, J. L.	125.	
Miller, H. C. & W. A. Page,	1,300.	
McCague, J L.	7,000.	
" "	3,260.61	
"	2,500.	
McCague Bros.	2,200.	
"	17,643.38	
McCague, W. L.	2,786.88	
"	10,120.51	
Mathews, H. W. & E. M.	2,000.	
Nevin, J. E.	125.	
~~Ours, N. B.~~	~~17.50~~	bankruptcy
Olsen, Theo.	783.	
Osterhoudt, B. H. Spring Wagon Co.,	297.75	
Powers, H. E.	1,789.10	
Parrotte, J. H.	322.	
"	105.20	
Parmer, Mark M.	200.	
Platter, Thos. H.	340.	
Powell, C. N.	234.	
Parkins, J. N.	176.75	
Patterson, D. C.	1,148.25	
Power, Chas. M.	475.	
Ramsey, O. N.	608.38	
Rice, J. L. & A.	2,200.	
Roeder, M. L.	2,000.	
Risdon, M. R.	2,100.	
Riall, Ernest	2,972.13	
"	689.43	
Smeaton, D. D.	175.	
Snell, Mrs. G. & Geo.	16.46	
Seward, E. E. & F. L. Blumer,	36.	
Seavey, W. S.	70.	
Stratton, C. E.	1,136.99	
"	231.24	
Squires, C. E.	9,233.52	
"	2,000.	
Thomas, D. L.	380.	
Van Kuran, A. J. & Amelia J.	150.	
" "	1,825.	
White, A. K.	4,000.	
Williams, W. N. Clapp, C. E. & F. Irvine,	515.	
Walker, Geo.	55.35	
Walworth, C. H.	3,500.	
Wright, E. M.	80.11	
Wyman, H. F.	240.	
Forw'd	190,938.43	

449 **EXHIBIT "30", Page 4.**

L. & D. No. 3 Br't Forward,		190,938.43
Wilson, T. B.		48.
White, W. T.		20.
Whitney, Addis M. Trustee,		8.740.

Wallace, Geo. S. & Essie,	2,500.
"	1,000.
"	414.98
"	106.56
"	600.
"	304.05
"	100.
" & F. S. Blayney,	1,000.
Zittle, J. D.	73.
Williams, Jno. A. & J. Reed,	2.
	$205,847.22

450 EXHIBIT "30", Page 5.

Statement of Stocks, Securities, Claims, &c.

JUDGMENTS.

C. T. Taylor & Thos. F. Boyd,	2,151.17
M. C. Hamilton, (Grahm)	168.67
W. H. Eldridge,	211.34
E. Fleishman, et al.	517.09
W. B. Musser & Adam Snyder,	48.50
A. A. (Phil E.) Winter,	305.52
W. F. Doolittle & J. H. Baldwin,	1,277.70
R. I. Mattice,	2,067.52
James Pape,	119.21
Geo. J. & John Paul,	857.77
Geo. J. Paul,	261.50
F. F. Williams,	2,470.
E. B. & Pauline Chapman,	596.42
E. P. Dridley & M. Morrison,	106.03
Phillip P. Mergen,	1,046.91
Paul Platz,	326.11
Briggs Place Bldg. Association,	1,917.49
J. C. & S. J. Walsh,	108.26
John A. Smiley & S. A. Crowe,	47.66
W. J. McEathron,	50.
J. C. Leeney & Paul Platz,	51.22
American Asphalt Co. (Ainscow & Caspar)	804.15
H. M. Morrow & W. H. Williams,	568.44
" & H. M. Williams	459.52
W. N. Williams,	949.
I. E. Burdick,	178.43
Patrick Land Co. & Est. W. H. Craig,	3,991.64
Broken Bow Roller Mill Co. S. J. Lonergan,	1,051.92
Apollo Club, W. H. Holbrook & I. M. Treynor,	[illegible] settled
Ed. Ainscow,	487.
H. E. Cole & W. D. Youlen,	176.85
E. H. Duncan,	41.27
Archer Eke,	2,419.55
Thos. M. Greeley & Co.	78.
Jas. R. Meikle,	198.
"	110.83
F. R. McConnell,	105.
"	105.83
"	169.60
J. I. Nichols,	4,835.58
N. B. Ours,	1,233.39
A. A. Raymond,	197.10
F. C. Shafer,	39.58
F. V. Wasserman & M. C. Beemer,	2,537.75
J. J. Wilkinson,	2,262.74
Jno. T. Williams, & G. F. Wittum,	52.50
	$37,609.01

BONDS.

5 Series D. McCague Invt. Co. $1,000. each, on books at		$2,500.	
STOCKS.			
50 shares	Nat'l Bank Bldg. Co. of America, on books at	5,000.	
4 "	Omaha Printing Co.	100.	
50 "	Galena Axle Grease Co. Galena, Ill.	~~1,000.~~	sold
5 "	Omaha Fair & Speed Association, at $25.	.....	
		$9,100.	

CLAIMS.

Tax certificate on lots 1, 2, 3, 4, & 5 Rockford Place, Doolittle & Badlwin Collateral,	$ 72.61
Tax certificate on lots 31, 32 & 33 Blk. 3 W. I. Selby's 1st. Addn. Ainscow Collateral,	9.36
Insurance Premium paid on policy of E. C. Bartlett,	187.50
Do. Do.	175.80
Do. Do.	187.50
Do. Do.	175.80
Insurance policy of N. G. Brown, paid up value $750.	10.00
	$818.57

451

EXHIBIT "30", page 6.

REAL ESTATE.

Ambler Place,	Lots 9, 10 & 12, Blk. 32 and lots 15 & 17 Blk. 39 with three seven houses.
Windsor Place Extn.	Lots 14 & 15.
West Side,	Lots 23 & 24 Blk. 27
So. Omaha,	Lots 7 & 8 Blk. 121
Bowling Green,	Lots 22, 23 & 24 Blk. 4
Boyd's Addn.	Lot 6 Blk. 20
Hickory Place,	W. 1/2 lot 29
Albright's Annex,	Lot 5 Blk. 8
Prospect Place,	E. 67' of So. 32' Lot 1 Blk. F. with small house.
E. V. Smith's Addn.	Lot 8 Blk. 10 with dilapidated house, Mtge. $1500.
Swift Place, So. Omaha.	Lots 1 & 2 Blk. 1
Dundee Place,	Lots 14 & 15 Blk. 106 Lot 15 Blk. 124
Grand View,	Univided 1/3 interest Lots 17 & 18 Blk. 448
Murphy's Addn. 38 lots	
Kountze Place,	Lots 1 & 2 Blk. 17 with 10 room house and barn, Mtge. $4000.
Griffen & Smith's Add.	Lot 2, Mtge $12,000. (about $9,000. still due)
Creighton Heights,	Lots 10 Blk. 7 and 3 & 4 Blk. 9
Steele & Woods Add.	Lot 24 Blk. 3
Potters Addn.	Lot 24 Blk. 1
Hoppes Bonanza,	Lot 7 Blk. 1
Mt. Pleasant,	Lot 15 Blk. 2
Paddock Place,	Lot 2 Blk. 6
Lobeck's Sub.	Lots 1 to 12 Blk. 2 and 8 to 18 Blk. 3

LANDS.

Keith Co. Neb.,	S. W. 1/4 Sec. 19-14-40
Douglas Co. Neb.,	Undivided one-half interest in 23 acres with mill and machinery in dilapidated condition and small house, also 1/2 interest in E. 1/2 N. E. 1/4 Sec. 10-15-10 and S. W. 1/4 N. W. 1/4 Sec. 11-15-10, near Waterloo, Neb.
" "	Sub. lot 20 tax lot 5 in Sec. 15-15-13, Mtge. $4,000.

Sheridan Co. Kans.	N. 1/2 Sec. 33-8-26
Reynolds Co. Mo.,	S. W. 1/4 Sec. 4-33-3
Dallas Co. Iowa,	S. 1/2 N. W. 1/4 & N. 1/2 S. W. 1/4 Sec. 15 and N. E. 1/4 Sec. 16-81-29, Mtge. $5,000. Also part of S. E. N. W. and part N. E. S W. Sec. 10-81-29 with Brick plant. Leased with option of purchase.

452 EXHIBIT "31"

Omaha, Neb., January 8th, 1900.

Supplemental Statement of the condition of The American National Bank of Omaha, from October 8th, 1899, to and including January 7th, 1900.

Total Liabilities, January 7th, 1900		$367,765.00
Total Resources " " "		$367,765.00
Total Collections as per statement of October 8th, 1899		117,352.77
Since above date to Jan. 8th, 1900, on account		
of Loans & Discounts	239.	
Interest & Discounts	168.85	
Real Estate, Rents	734.68	1,142.53
		$118,495.30
Total Expenditures as per statement of October 8th, 1899		117,352.77
Since above date to Jan. 8th, 1900, on account		
Real Estate, Taxes	77.07	
Salaries	241.93	
Sundries	1.22	
Cash on hand, (Total $3,041.83)	822.31	1,142.53
		$118,495.30

In the statement of Loans & Discounts the account of H. F. & C. F. Haman should be credited with $30., and C. E. Clapp's note with $200. These are the only changes that should be made in the detailed statement rendered.

453 EXHIBIT "32".

Statement of Collections and Expenditures made by James Burness, Trustee of the American National Bank, since the date of his appointment (January 8th, 1900) to and including October 31st, 1901).

COLLECTIONS:	
Cash on hand January 8th, 1900	3,041.83
Loans & Discounts	22,284.17
Interest & Discounts	3,728.73
Real Estate, act Rents	971.25
" " " Sales	10,980.47
" " " Taxes rebated	138.53
Stocks Securities, Claims, etc.,	15,669.08
Received on account of 10 shares of stock of American Nat'l Bank, held by the late Thos. L. Kimball,	1,000.
	$57,814.06
EXPENDITURES:	
Paid Union National Bank on notes	19,000.
Real Estate, act. taxes,	834.35
Paid J. E. Markel, his proportion of rents collected from Waterloo property	324.27

Court Costs	199.27
Attorneys fees	375.
Settlement of Steinberg case,	500.
Advertising, Postage, &c.,	27.40
Sundries, Ins. Abstracts, Commissions, &c.,	172.43
Salary of Trustee	1,633.25
Stocks, Securities, Caims, &c.,	7,979.90
Profit & Loss	21,040.47
Cash on hand Oct. 31st, 1901	3,977.72
	$56,064.06
Charged Loans & Discounts	1,750.
	$57,814.06

The following notes held in the "Loans & Discounts" account have been settled by compromise or adjustment or wiped out by the parties taking advantage of the bankrupt law:

T. W. Blackburn	275.	
C. M. Brewster	25.	
S. S. Beebe	64.	
Chas. E. Clapp	566.	
S. S. & C. E. Curtis	1,200.	
S. S. Curtis	2,500.	In Stocks, Securities, Claims, act. Judgt.
" "	90.	
" " & F. J. Sackett	2,639.48	
" " " "	274.50	
Dawson Brick Co.	3,000.	
Ford & Charlton Music Co.	1,249.74	
J. Q. Gaston	55.05	
C. F. Harrison & C. A. Goss	478.20	
J. J. Hanninghen	203.64	
K. Jessen	10.	
[454]		
J. P. Mallender	515.	
N. B. Ours	17.50	
W. S. Seavey	70.	
C. H. Walworth	3,500.	
H. F. Wyman	240.	$1,200 of this has
Flack Co.	3,276.37	has been paid and
J. F. Flack	10,907.20	balance will be charged to Profit & Loss after payment of $300 more

In the statement of claims, stocks, securities, &c., the following have been settled by compromise or advantage of the bankruptcy act taken:

W. H. Eldridge,	211.34
E. Fleishman, et al (Steinberg)	517.09
R. I. Mattice	2,007.52
E. E. & Pauline Chapman	596.42
Briggs Place Bldg. Assn.	1,917.49
H. M. Morrow & W. H. Williams	568.44
" "	459.52
Patrick Land Co. Est. W. H. Craig	3,991.64
Broken Bow Roller Mill Co. & S. J. Lonergan,	1,051.92
Apollo Club, W. H. Holbrook, et al,	99.25
E. H. Duncan	41.27
F. R. McConnell	105.
"	105.83
"	169.60
N. B. Ours	1,233.39

BONDS:
McCague Invt. Co. Bonds have been sold.

STOCKS:
The 50 shares of Galena Axle Grease Co., stock has been sold.

The following Real Estate has been disposed of:
Lot 12 Block 32 Ambler Place.
Lots 7 & 8 Block 121 So. Omaha.
Lots 1 & 2 Kountze Place, known as the Fawcett property.
E. 30 feet ex No. 10 feet Lot 28 Millard & Caldwell's Addition W. ½ of N. E. ¼ Sec. 7-4-21 in Furnas Co. Neb.
Undivided ½ interest in about 23 acres and ½ interest in E. ½ N. E. ¼ Sec. 10-15-10 and S. W. ¼, N. W. ¼ Sec. 11-15-10 near Waterloo, Neb.

There has been added to the Real Estate, Lot 2 Block 7 Ackerman Place.

455 Page 1 of EXHIBIT 33.

Statement of Cash Collections, Disbursements &c.

456 Pagt 2 of "EXHIBIT 33".

Statement of Cash Collections From the Commencement of Liquidation Dec. 23rd, 1895 to and Including October 31st 1901.

Not itemized (This item is composed of collections			12989 85
Loans & Discounts from overdrafts, Banks & Bank-			36502 95
Interest ers & Misclaneous remittances)			8672 30
Overdrafts			118 56
United States Bonds, Realized		54375 00	
Less Circulation		45000	9375
Five per cent Fund		2250 00	
Less assessment for expenses	75 84		
" Duty Jan. 1 to May, 1896	150	225 84	2024 16
Stocks, Securities, Claims etc.,			
" Packers Natl. Bank, Galena Axle Grease Co.,			
& Rocky Mounty Bell Telephone Co.			4012 75
Bonds, Holdrege Water Bonds & Coupons McCague			
Invt. Co. Bonds			15550 97
Claims, Walrath Interest, Om. Claring House Assn.			
$250 &c.			1095 65
Judgments			2232 08
City Warrants			2058 62
County "			112 45
Furniture & Fixtures			3750
Real Estate, Sale of			10197 10
" " Rents, Dallas Co. Ia. farm			6051 28
Kountze Place, Prospect Place			
Crescent Park &c.			
Sale of Brick Plant			182 97
" " " " Gas Pipe			135 35
Rents & Sale of old Mill Waterloo property			893 16
Sale 2nd mortgage Lot in Deer Park Add.			350
Fire loss, Crystal Ice Co. and $99			1090 65
Rebates credited to expense act.			317 71
Banks & Bankers			611 15
Bankers Bldg. & Loan Assn.			570
Sale maps, plat book & old books			11 20
Redick Park Bldg. Assn.			22 64

Costs rebated or collected	14 05
Attorneys fees "	12 50
Revenue Stamps	2 50
Taxes rebated	186 18
Profit & Loss, Riall goods, Robinson chattels, Biggar Quit claim, Nichols Stock, &c., &c.	2191 65
Costs retaibed Dec. 23-95 less $15 expense to Seward	1485
Certificate of Deposit, Union Natl. Bank	4000
Thos. L. Kimball estate, act. 10 shares of stock	1000
To balance	14 72
	$127744 15

457 **Page 3, of EXHIBIT 33.**

Statement of Disbursements From the Commencement of Liquidation Dec. 23rd, 1895, to and Including October 31st, 1901.

Union National Bank on act. of Liabilities assumed which were not included in notes aggregating $201,000	17832 16	
Interest to Dec. 23, 1895 in cert. of Deposit Public Funds, Bills Payable & adjustment of interest on Bills Receivable to be taken by Union	1250 80	
Overdrafts with correspondents	2245 76	
Checks of Depositors drawn against accounts not placed on books of Union	1425 96	
Unclaimed balances	45 22	
		$22,799.90
Duty on circulation to Jan. 1, '96 to adjust 79	225 79	
Readjustment of two loans, ours & Herdman	50 52	
Attorney's fees	2589 98	
Sundry expenses, Clearing House to 12-23-95 Towel Co., etc.	38 85	
Salaries from Dec. 15, 1895	268 86	
Court costs	405 63	
Personal tax	1119 71	
Rents of American Quarters to Dec. 23 '95	286 65	
		4,985.99
Union Natl. Bank, including Interest	66330 40	
Half Rent old quarters Union & $25 land of Crystal Ice Co.	3563 82	
Examinng land Boone Co. Nebr.	12 30	
Storage & Drays &c. Riall goods	74 86	
Cleaning, Turning, Stools &c. for Ford & Co. Music	67 95	
Ice Co. Electric Light Co. (Co's Pianos)	3 70	
Refunded to Anna M. Biggar	10 00	
Collecting Holdrege bond coupons	10 62	
Stenographic Services, Depositions &c.	65 30	
Exchange 1.52, Express 7.35, car fare, calender Pads 2.85, Meals 1.50, Protest fees 3.10, Dumont claims 50 cts.	16 82	
Omaha Clearing House to Dec. 23 '95 Fitting up Vault case	41 20	
Robinson's chattels	114 50	
Expenses to Washington, Lincoln & Perry, Ia	96 16	
Hire horse & buggy $2.00, appraisals 7.50	9 50	
Telegrams	7 93	
Cleaning vault, Prospect Place	5 20	
Publishing notices, annual meetings, Printing & stationery	145 56	

Insurance	69 15	
Repairs to Toft, Kountze & Prospect Place property	221 64	
Salaries, including Trustee's $1632.50	6514 39	
Commissions on sale Real estate	85	
Abstracts to "	106 20	
Sidewalks Brick	183 52	
Taxes "	4707 44	
Interest on mortgages including payments to Bankers Bldg. & Loan Assn. on Griffin & Smith's property, also payment of $500 mortgage on Prospect Place property	90007 70	
Ford.	119256 75	

458 Page 4 of EXHIBIT 33.

Brot. Ford.		119256 25
Attorneys Fees		2640 93
Steinberg case		500
Court costs		724 71
Recording Deeds, Leases &c.		29 55
Postage & Revenue stamps		130 34
Unclaimed balance, F. R. McConnell		83 33
Paid J. E. Markel his one-half of Rents &c., from Waterloo property	400 82	
Cash on hand in Union Natl. Bank	3977 72	
		$127744 72

459 Page 5 of EXHIBIT 33.

The Following Payments Have Been Made to the Union National Bank, Either on Account of Principal or Interest.

1896.			
Jany	27		3000
Feby	29		3000
Mch	10		1000
"	27		1005
	31		1965 96
May	5		6000
	16		4000
June	23		2844 44
1897			
Feby	12		2010
	17		1005
Apl	16		2250
	"		2010
	"		1005
	"		8235
May	12	(Cert of Dep)	4000
1899			
Mch	16		4000
1900			
Feby	8		3000
May	12		10000
Nov	7		5000
1901			
Jany	2		1000
			$66330 40

460 **Page 6 of EXHIBIT 33.**

Attorneys in Account with American National Bank

1895				
Dec	30	H. B. Smith	700	
		"	333	33
1896.				
Jany	11	" Franklin Sav Bk v Nichol	327	20
	27	Hall & McCulloch, Holdrege bond suit	1000	
May	26	H. B. Smith on act.	150	
June	6	R. I. January, Colo & Youlen case	15	
	2	H. B. Smith act Lobeck	10	
	29	W. H. Thompson, Am. Asphalt case	25	
Dec	23	Goss & Ross Paul et al Smith Enewold	55	
	"	J. R. Lindsay, Limbeck	11	
	30	H. B. Smith act fees	100	
1897				
Jany	20	D. L. Thomas, Bradley case	5	
Feby	15	H. B. Smith act services	400	
Mch	4	Wharton & Baird foreclosure services	25	
Apl	19	H. B. Smith	1032	60
July	1	"	100	
Augt	16	W. H. Thompson, Om. Coffin Mfg. Co.	25	
Sept	15	H. B. Smith	386	78
Oct	22	W. D. Beckett, Referee Festner case	75	
Dec	23	W. H. Thompson, Murphy case	50	
1898				
Jany	30	R. I. January, Youlen case	15	
May	17	D. L. Thomas " "	5	
1899				
Jany	13	Nichol, J. I. Lewis case	10	
1900				
Sept	10	T. W. Blackburn, Graham, Walworth Cooley, et al	275	
Apl	30	W. H. Thompson, Steinberg case	100	
			$5230	91

461 **Page 7 of EXHIBIT 33.**

INTEREST.

1895				
Dec	27	Union Natl Bk. Cert of Dep. to 12-23-95	329	58
		County funds	293	24
		City "	7	94
		State "	1	83
		Bank Balances	4	55
		Wm. Minot	147	20
		Lawrence Minot	20	61
	28	Bills Payable, N. Y.	252	
	"	Bills Payable Wm. Minot	61	63
	"	Rebate to Union Natl. Bank act. notes sold them	201	75
	"	Bkrs. Bldg. & Loan Assn. Dues & Int. (on Griffin & Smith's Lot)	190	
	30	Int. Mort. E. V. Smith's Add. B. Reed Co.	45	
1896.				
Jany	2	" Am. Exc. Bk. chge. Dec	11	55
	6	" 1st Natl. Bk. N. Y. "	8	58
	11	Bills Payable, Chicago	8	33
	"	Renewal note W. W. Mace	1	75
	25	Bkrs. Bldg. & L. Assn. Dues & Int.	190	
	28	Cert. Dep. No. 6279 Om L & Tr. Co.	150	

Mch	2	& 31 Bkrs. Bldg. & L. Assn. Dues & Int.	570	
	&	4-28 3 mos.		
"	26	Int. on $5000 Mort. Dallas Co. Ia, land	300	
May	4	" 4000 " Kountze Place	120	
	"	Mort $500 & Int Prospect Place	525	
June	3			
June	6	Bkrs. Bldg. & L. Assn. Dues & Int.	380	
June	19	Int. on $1500 Mort. E. V. Smith's Addn.	45	
July	15	R. White Miller, Coll.		50
	"	Bkrs. Bldg. & Loan Assn. Dues & Int.	190	
Sept	2	R. White Miller, Coll.		28
Oct	17	Bkrs. Bldg. & L. Assn. Dues & Int.	190	
Dec	14	" " " " "	190	
Nov.	24	" " " " " "	190	
Oct	31	Int. on Mort. Kountze Place	120	
Dec	21	" " " E. V. Smith's Add.	45	
1897				
Mch	25	" " " Dallas Co. Ia.	300	
Feby	12	Bkrs. Bldg. & L. Assn. Dues & Int. 4 mos.	760	
Apl.	30	Int. on Mort Kountze Place.	120	
June	21	" " " E. V. Smith's Add.	45	
Augst	6			
Oct	11	Bkrs. Bldg. & L. Assn. Dues & Int. 5 mos.	950	
Nov	1	Int. On mort. Kountze Place	120	
"	24			
Dec	27	Bkrs. Bldg. & L. Assn. Dues & Int. (3 mos)	570	
"	20	Int. on Mort E. V. Smith's Add	45	
1898				
Jany	29	Bkrs. Bldg. & L. Assn Dues & Int.	570	
Mch	3	" " " " " "	131	98
"	28	" " " " " "	190	
April	30	" " " " " "	190	
Mch	29	Int. on Mort Dallas Co. Ia	300	
Apr	27	" " " Kountze Place	120	
May	28	Bkrs. Bldg & L. Assn. Dues & Int	190	
June	20	Int. on Mort. E. V. Smith's Add	45	
Augt	15	Bkrs. Bldg. & L. Assn Dues & Int.	190	
Nov	12	Int. on Mort. Kountze Place	120	
Dec.	21	" " " E. V. Smith's Add.	45	
1899				
Mch	29	" " " Dallas Co. Ia	300	
May	9	" " " Kountze Place	120	
	21	" " " E. V. Smith's Add.	45	
			$10,258	50

462 Page 8 of EXHIBIT 33.

TAXES.

1896.				
July	30	Personal city taxes	1119	71
Jany	6	1895 taxes Sheridan Co. ks	1	
	20	Lot 2 Blk. 17 Kountze Place, Spl. taxes	70	86
	21	1895 tax Keith Co. Neb land	8	22
	23	" " Dawson " "	20	32
		" " Furnas " "	9	92
	27	" Co. tax Swift Place Lots 1, & 2 B. 1	1	00
	30	" " " Waterloo property	45	16
		" " " Prospect Place	2	63
		" " " Millard & Caldwell's	5	75
		" " " Howell Plce.	4	19
		Marion "	4	79
		Albright Annex	1	25

		Boyds Add.	1 20
		E. V. Smith's Add	11 50
		Dundee Place	5 54
		Griffin & Smith's	43 11
		Creighton Heights	2 39
		Tax Lot 5, 15-15-13	8 98
		Kountze Plce.	28 38
		Grand View	1 68
		Murphy's Add.	33 97
Mch	10	" City tax Toft property	71 22
		" Co & St " " "	47 57
		1894 " " " "	54 86
		" & '95 tax So Omaha	63 55
		1895 Enewold property	3 77
	24	1892, 3, 4, & 5 Co. & St. taxes Bowling Green lots	4 55
	26	1895 tax Dawson Brick Co.	36 18
		½ " " Dallas Co. Ia. land	56 12
May	11	Sidewalk tax Hickory Place	1 14
		" " E. V. Smith's Add.	1 29
		" " Kountze Plce.	38
	8	Grading Lots 7 & 8 B 121 So. Om.	165 72
	19	Sidewalk tax Kountze Plce.	29
	"	1895 City tax Ambler Plce. 17 B 33	2 94
	"	Grading Pac. St. Hickory Plce.	22 16
July	29	1896 City tax Ambler Place	18 44
		" " " West side	4 10
		" " " Windsor Plce.	12 20
		" " " Boyd's Add.	2 05
		" " " Grandview	96
		" " " Hickory Plce.	4 10
		" " " Howell	7 17
		" " " Kountze Plce.	48 59
		" " " Griffin & S & other property	135
Augt	24	1868 Co. " Crystal Ice Co. prop.	1 88
Sept	25	1895 2d payment, Dallas Co. land	43 26
Dec	18	1892 3, 4 & 5 Co. & St. taxes Lobeck prop.	57 26
	"	1895 & 6 city taxes " "	4 42
"	31	1893 4, 5 & 6 city taxes So. Omaga	6 60
	21	1896 " " Albright's annex	1 50
	"	" " Lots 7 & 8 So. Omaha	16
	31	" taxes Sheridan Co. Ks land	33 63
		Ford.	2360 55

463 **Page 9 of EXHIBIT "33".**

TAXES.

1897		Brot Ford.	2360 55
Feby	9	Tax cert Lot 7 V. 1 Hoppes' Bonanza	9 69
	25	Repair tax E. V. Smith's Add.	6 57
	"	Pav. & Curb. tax 4th & 5th Installments Kountze Place	94 83
		" " 2nd. Install. Millard & Co. Add.	18 90
Mch	19	1896 Co. & St. Waterloo property	15 33
April	28	" " Swift Place	1 24
		" " Steel & Wood's	3 63
	29	" " Furnas Co	5 85
	30	" " Keith Co.	8 26
		" " Douglas Co.	191 11
June	21	" City Lots 7 & 8 So. Om Blk. 121	12 75
July	3	" Co. & St. Lot 8 " "	3 09
Augt	17	1897 Road tax Dallas Co. farm, Iowa	7 29
	24	" City taxes	347 74
	"	1896 " " Lots 15 & 17 Ambler Place	23 37
Sept	22	" Co. St. Dallas Co. farm	102 94

Oct	11	1897 City taxes Squires land	70	20
	14	Special taxes Millard & Cs. Add.		39
	"	" " Prospect Place		30
Dec.	4	Sidewalk tax E. V. Smith's Add	5	35
	"	" " "	3	15
	"	Paving 9 & 10 Instal. "	56	50
	6	1897 taxes Sheridan Co. ks.	30	18
	14	" " Lots 7 & 8 B. 121 So. Om.	14	24
	"	" " " 5 B. 8 Albright's Annex	1	34
	"	" " " 7 " 1 Hoppe's	1	34
1898				
Feby	26	½ 1897 " Dallas Co. farm	44	30
	"	" " " Brick plant, Ia.	2	34
Apl.	16	1897 Co. & St. Murphy's Add.	2	92
	27	" " Furnas Co. Neb.	6	06
	"	" " Keith Co. "	7	57
	"	" " Lots 1 & 2 B. 1 Swift Place	1	18
	"	" " " 24 B. 3 Steel & W Add.	2	01
	30	" " " Douglas Co. property	172	39
	"	" " " " "	9	00
	"	" " Squires land	24	45
	"	" " Waterloo "	22	81
Augt.	15	1898 Labor tax Dallas Co. Ia	7	04
July	19	1898 City taxes		
		Ambler Place Lots 9, 10, 12 B. 32, 15 & 17 " 39	20	
		Boyds Add " 6 B 20		85
		Creighton Hts. Lots 10 B. 7 & 3 & 4 B. 9	3	27
		Gd. View Und. 1-3 Lots 17 & 18 B. 448	8	40
		Griffin & Smith's Lot 2	79	63
		Howell Place Lot 37 N½ 38		73
		Marion Place " 7	2	30
		Millard & C Add. Lot E 30' ex No 10 of 28	12	12
		Hickory Place W½ Lot 29	1	82
		Kountze " Lots 1 & 2 B. 17	38	06
		Prospect Place S 32½ of E 67 Blk. F	10	54
		Ford.	3875	92

464 Dr. Taxes. In Account with the American National Bank.

Page 10 of EXHIBIT "33"

1898		Brot. Ford.	3875	92
July	19	1898 City taxes		
		E. V. Smith's Add Lot 8 B. 10	16	
		West Side Ex " 23 & 24 B. 27	1	70
		Windsow Place " 14 & 15	7	03
		Potter's Add. " 24 B. 1	6	06
		Squires land S½ SW Swd 15-13	60	96
Sept	14	1897 taxes Dallas Co. Ia	38	72
	"	" " Brick plant	1	72
	15	Paving 3rd & 4th Instal. Millard & C.'s Add.	40	80
Dec.	14	1898 taxes Sheridan Co. Ks.	30	10
	27	" City " Lots 7 & 8 B. 121 So. Om	17	92
	"	" " " " 5 B. 8 Albrights Annex	1	63
	"	" " " "7 B. 1 Hoppe's Bonanza	1	96
	29	1897 & 1898 taxes Reynolds Co. Mo. SW¼ 4-33-3	7	18
1899				
Jany	6	Balance " " " "	2	43
Mch	13	½ 1898 " Dallas Co. Ia	43	42
	"	1898 " Lot 24 B. 3 Steel & Wood's Add	2	16

Apr	13	" taxes Furnas Co. land	4 96
	18	" " Keith " "	6 03
	26	" Co & St. Ambler Place	15 96
		" " Bowling Green	1 06
		" " Boyds Add	93
		" " Creighton Hts.	2 20
		" " Gd. View	46
		" " Griffen & Smith	40 47
		" " Marion Place	3 47
		" " Millard & Caldwell's	5 32
		" " Hickory Place	1 85
		" " Murphy's Add	26 79
		" " Kountze Plce.	26 59
		" " Prospect Place	2 43
		" " Potters Add.	3 12
		" " E. V. Smith's Add	8 67
		" " West Side	1 38
		" " Windsor Place Ext.	5 09
		" " So. Omaha	13 80
		" " Albright's Annex	1 23
		" " Dundee Place	4 29
		" " Hoppe's Bonanza	1 51
		" " Lobeck's Sub.	5 28
		" " Mt. Pleasant	84
		" " Squires land	23 13
		" " Waterloo "	28 01
		" " Swift Place	1 12
	15	" " Cheyenne land	49 32
May	11	Ure Redemption taxes Paddock Place lot	100
	29	1895 6, 7, 8 Co. & St taxes on above	20 54
	"	1894, 5, 6, 8 & 9 City taxes " "	66 51
June	30	1899 City taxes, Ambler Place	11 88
	"	" " " " " "	17 75
		" " " Boyds Add.	2 00
		Ford.	4659 72

465

Page 11 of EXHIBIT "33"

Dr. Taxes. In Account with American National Bank.

1899		Brot Ford.	4659 72
June	30	1899 City taxes Creighton Heights	3 00
		" " " Grand View	7 25
		" " " Marion Plce.	4
		" " " Millard & Caldwell's	15 25
		" " " Hickory Plce	4
		" " " Kountze Plce	51 75
		" " " Prospect Plce	11
		" " " Potters Add.	7
		" " " E. V. Smith's Add	16 25
		" " " West Side	2 75
		" " " Windsor Place Extn	10
		" " " Squires land	82 50
Augt	14	" taxes SW¼ 4-33-3 Reynolds Co. Mo.	3 42
Sept	26	Bal 1898 taxes Dallas Co. Ia farm	37 84
Dec	20	1899 Co & St taxes Sheridan Co. Ks	28 82
	27	" " City taxes So. Omaha	13 44
	"	" " " " " Albright's Annex	1 26
	"	" " " Hoppe's Bonanza	1 47
	2	" Co. & St. taxes Cheyenne, Wyo. land	32 08
1900			
Apl	5	Pav. & Curb. tax (1 Instal) Millard & C Add.	22 07
	"	1899 Co. & St. taxes " "	5 78
Mch	27	" " Dallas Co. Ia. farm	80 78

June	27	" " Waterloo property	37	49
	"	" " Squires land	25	36
	"	1900 City " "	92	40
July	16	Clk. Dist. Crt taxes (decree) Lot 2 Blk 6 Paddock Place	42	30
Oct	9	1900 Co. & St. taxes Reynolds Co. Mo. land	4	26
Dec.	12	I. S. Leavitt Bal. tax lot 3 Blk. 6 Paddock Place	7	70
	10	1900 taxes Cheyenne Wyo. land	30	96
1901				
Jany	1	" " Sheridan Co. Ks.	19	44
Feby	"	" " Waterloo land	39	52
	23	1-5th 1895 & 1896 Co. & St. taxes Squires land	17	15
	25	" 1896 City " "	14	89
	"	Clk. Dist. Crt. redemption 1-3rd Ure (Squires land) decree	62	21
	"	4-5ths 1895 City taxes, Squires land	94	61
	26	1-5 " " " " "	14	08
Apl	30	1900 Co & St. " " "	34	58
	1	1899 & 1900 Co. & St. taxes Lot 8 B. 121 So. Om.	17	96
	"	1900 City Taxes " "	11	75
	3	1899 & 1900 Co. & St. taxes Lot 7 B. 121	12	32
	"	1900 City taxes " " "	7	43
Feby.	19	Redemption of Tax. cert Dallas Brick Plant	137	18
			$5827	15

466 Page 12 of EXHIBIT 33.

Dr. Expenses. In Account with American National Bank.

1895			
Dec.	23	Exchange	10
	24	Telegram to N. Y.	50
	26	Exchange	40
	28	Wyman, on salary	15 75
	"	Protest fees, Rosenthal Am Ex Bk. Chgo	3 10
	31	Cole & Youlen Jdgt. costs of suit	15
	"	Express	10
	"	Salaries	445 52
1896.			
Jany	2	Exchange Chgo. 12-16	15
		Omaha Towel Co 12-16 to 1-1	1
		" Bee, publishing statement 12-26	7 75
		½ Rent Union Natl. Bk. Dec	28 90
		McCoy & Co	9 00
	3	Semi-annual tax on circulation	225
	"	Western Union Telegrams	2 13
	"	Postal "	32
	4	Exchange Rebate, Sherman & McC	15
	"	Expense on Holdrege Bonds	6 75
	6	Rent December	300
		Advertising W. Herald	2
	7	Brownlee Salary Jany 1-7	29 15
		Bullock " " 1-6	18
	11	Omaha Printing Co.	6 75
		Wyman act. salary	20
	"	Heller, Transcript Franklin S. Bk. v. Nichol	2 50
	"	Wilson " Am v Union	24 25
	21	Crystal Ice & Coal Co. Land Rent	25
	16	To Seward Faye suit, subpoena (in Nov. '95)	15
	"	Wyman salary	80
	"	Stenographic work Miss Smith	5 30
		Om. Clearing House Exp. 1895	18 87
	20	Postage	2
	21	Gate City Wood Works, vault case	26 60
	23	Robt. L. Whyte, meals	1 50

Feby	1	Rec. Lewis lease, Dallas Co. land		75
		" Deed Blair to Bk.	1	
	4	Hannigben, Plumbing Kountze Place	37	95
	15	Ins. prem. Millard & Caldwell house	12	
Jany	27	Wyman, salary	10	
Feby	3	McCoy & Co printing	4	75
	"	C. C. Claflin, stenographer	2	
	"	Postage	5	
	"	½ rent Union old quarters	145	83
	"	Wyman, salary	90	
	4	Rec. release Bowling Green lots		90
	"	Rec. J. I. Lewis lease		50
	5	Omaha Printing Co. Bal books	25	50
	15	suit A. M. & W. T. Clark costs	2	35
		Cooke & Co. Fitting keys	2	10
	18	Garrison, appraisal Riall prop.	2	50
	19	Wyman, salary	100	
		Ford.	1802	21

467 Page 12 of EXHIBIT "33"

1896		Brot. ford.	1802	21
Feby	20	John Bros. moving Riall goods	2	
	"	Powers (J. P.) costs Goldsmith suit	2	15
	24	Ayers & Wooden " Dawson Brck. Co.	12	05
	"	Advertising Robison sale	6	
	28	Costs bond, Om. Coffin Co.	10	90
		" " Am. Asphalt Co.	10	70
	29	Insurance prem. Crystal Ice prop.	36	
Mch	3	½ Rent Union old quarters	145	83
	6	Wyman salary	100	
		Sundry expenses, Exp. on currency .40, costs Youten 2.10, Labels Riall .30 costs Wms. & Reed 4.95	7	75
		Storage Riall goods	60	
		Westn. Union Telegrams	1	47
		Moving Riall goods	1	81
		McCoy & Co., Printing	1	
Feby.	29	Donation to Cent. U. P. Congl. (given to assist in raising the amount necessary to take up the obligation to Am. Natl. Bk.) Profit & Loss item		
Mch	2	Two Scrapers bought Robinson's sale	11	50
		1 team horses " "	53	
		1 " Mules " "	50	
	10	Abstract Toft prop.	7	35
		Rec. deed "	1	15
		Costs suit Wyoming Co.	12	
		Express on Currency		10
		Cert. copy Bill Patrick	2	35
		Dep. L. G. Charlton	10	
	12	Postage	5	
	16	Wyman, salary	100	
	31	" "	100	
	"	Gate city Wood Work shelves	2	50
April	4	H. B. Smith, Sundry costs	15	
	"	Telegrams	1	13
	11	⅓ rent Union old quarters	145	83
	"	Wyman's Washington trip	100	
	"	" salary	50	
	20	" "	50	
	21	Telegrams		65
		Postage	5	
	20	Wyman, salary	100	
		Costs suit v. Bruyn	20	25

May	2	" " " Burdick	2 35
		" " v Hazen	1 50
	4	½ Rent Union old quarters	145 83
	11	Costs Bk. v. Murphy	44 20
	15	Wyman salary	100
		Telegram	80
		Balance of duty (to adjust)	79
June	22	Prem Ins. Kountze Place	3 55
May	23	H. B. Smith, Sundry costs	25
	25	W. H. Thompson, Am. Asphalt Co costs	7 90
	28	Wyman salary.	100
		Ford.	3474 30

468 Page 13 of EXHIBIT "33" 2.

Dr. Expense.

1896		Brot ford.	3474 30
June	2	John Bros. moving Riall goods	2 25
	"	Postage	5
	9	½ Rent Union old quarters	145 83
	"	Raymond estimate Ice houses	5
	15	Wyman, salary	100
	23	Storage, Riall goods	8
	29	Om. Mercury, Adv. liquidation notice	6 85
	"	Thompson, costs, Am. Asphalt Co. suit	7 85
	30	Wyman, salary	100
		Personal city taxes	
July	1	½ rent Union old quarters	145 83
	13	Stumpf & Steiner Liquidation notice	10
	15	Wyman, Salary	100
	23	Postage	10 90
		Costs v Nattinger	5
Augt	24	Plumbing Kountze Place	2 70
July	31	Wyman, salary	100
Augt	17	" "	100
	31	" "	100
	18	½ rent Union old quarters	145 83
Sept	2	" " " " "	145 83
	"	Omaha Ice Co. 1-4-96	1 50
	12	costs Int. Land & Inv. Co	15 95
	15	Wyman, salary	100
	29	costs, cases Nattinger, Perkins & Roeder	60 80
	30	Wyman, salary	100
Oct	8	½ rent old quarters	145 83
	12	costs Riall publication	12 25
	15	Wyman, salary	100
	26	costs Boteler v. Munk	48 23
	31	Wyman salary	100
Dec.	9	Crescent Park, Repts plumbing	18 30
	"	Kountze Plcs. " "	2 79
	23	Recording deeds	2 30
		" " Enewold prop.	1 25
		" Callahan Mtg.	20
		Abstract blanks	15
Nov.	14	½ rent Union old quarters	145 83
	16	H. B. Smith, sundry expenses	10
	"	Wyman, salary	100
	24	Advanced to Anna M. Biggar	5
	28	Wyman, salary	100
Dec.	3	" Expenses to Cheyenne	14 80
		½ rent Union old quarters	145 83
	8	Trans. judgt. Int. Land & Inv. Co	1
	10	H. B. Smith, sundry expenses	15
	12	Stools for F. & C M. Co. Pianos	12

	14	Postage	5	
	15	Wyman, salary	100	
	15 23	Tuning & cleaning pianos, &c.	17	10
	21	Bradley, Court costs	2	95
	23	Advance to Anna M. Biggar	5	
	30	Wyman, salary	100	
	"	½ Rent Union old quarters	145	83
	"	Painted sign Carelton (H. F. W.)	2	50
		Ford	6357	67

469

Page 14 of EXHIBIT "33"

Dr. Expense

1897		Brot ford	6357	67
Jany	14	Adv. F & C Music stock	10	55
	30	Abstract to White property	9	20
	5	costs McConnell suits (Powers J. Peace)	3	
		McCoy & Co, Printing	2	25
		suit Appollo Club 2.00		
	9	Sundry expenses, Plumb Mtg. 40	2	40
	15	Salary H. T. Wyman	100	
	19	Costs Bogart & Parrotte	4	40
	25	Wyman, Exp. to Lincoln (Mathew's note)	3	60
Feby	3	½ rent old quarters of Union	145	83
	"	F. & C. M. Co. Elect. light bill	1	67
	"	Salary, Wyman	100	
	4	West, moving pianos	6	75
	5	costs in Int. Land & Inv. Co.	18	25
	8	S. & Mueller 2 piano covers	3	
	12	January costs in Youlen case	24	03
	13	Postage	5	
	15	salary Wyman	100	
	18	Sundry expenses Rec. deed 1.10, Trans. Appollo .50 Bill S & Mc .75	2	35
	23	Hayden Bros. Pieno cover	2	10
	"	S & Mueller " "	4	
	"	H. S. Merriam pieno tuning	3	
April	13	Blake, Com. for renting farm	10	
Feby	23	Bottel, Drayage pianos	7	50
	24	" " "	1	25
	27	Salary, Wyman	100	
Mch.	1	½ rent old quarters Union	145	83
	"	Horse & buggy W. Mudge	2	
	4	costs v Alnscow Gosney	1	90
	5	" " Int. Land & Inv. Co.	27	55
	8	" " Mathews	5	
	17	" Apollo Club		
		" " Bradley		
		" " Morrisey	16	35
	20	Salary, Wyman	50	
		" "	50	
Apl	1	½ rent old quarters	145	83
	13	Prem. on 2 bonds in case Int. Land & Inv. Co.	10	
	10	Costs v " " " "	2	15
	"	Om. Mer. Adv. Riall H. H. goods	12	25
	16	Plumb, for pianos scarf	3	
	19	Costs v Int. Land & Inv. Co.	2	
	20	Tuning & cleaning piano	2	50
	"	West moving	3	75
	24	Franklin Sav. B. v Nichol	5	65
		Sup. court fees		
	27	Potter Cd Abstract judgt. C. E. Squires	5	50
	"	Costs Fitch Bay & Co. note	3	

	28	Recording Assignment, Mtge. Squires	1
	"	Rec. Q. C. deed Kimball to Bk.	1 25
May	4	½ rent old quarters	145 83
	11	Stamps envelopes	2 18
		Ford,	7672 52

470 **In Account with American National Bank.** **Cr.**

1897	.	Brt. ford.	7672 52
May	11	Rec. Trimble Mtge.	20
	27	Pub. notice annual meeting	1
	"	Execution E. B. & P. Chapman	1 25
	"	Rec. agreement F & C M. Co.	1 40
June	1	Costs in J. I. Lewis case	3
	—	½ rent. old quarters	145 83
	10	Costs in J. B. Meikle suit	3
	19	Stamped envelopes & Stamps	5
	25	Transcript Om. Coffin Mfg. Co	4
	28	Execution, Chapman	1 20
	"	" Bogart .	2 50
	29	M. T. Murphy witness fees	2
July	1	Execution Smiley & Crowe	1 25
	3	½ Rent old quarters	145 83
	19	Costs v Int. Land & Inv. Co.	18 95
Augt.	6	Jas. Burness, salary	200
	7	½ rent old quarters	145 83
	26	F & C. M. Co. electric light	53
	30	Stamped envelopes and stamps	4
	"	Execution, Bogart	1 20
Sept	14	½ rent old quarters	145 83
	7	Steno. services Festner case (F. E. Bell)	50
	18	Collecting coupons Holdrege bonds	2 11
	21	Johnson Bros. Moving pianos	2
	30	Adv. F & C. M. Co's pianos	10
	"	Jas. Burness, salary	100
	"	" " expenses to Perry. Ia.	2 86
Oct.	7	½ rent old quarters	145 83
	8	Execution Smiley & Crowe	1 20
	9	Transcript Om Coffin Co.	5
	"	Sundry costs	96
	16	Stamps, envelopes, 200	4 36
	29	Powers costs Kennedy	3 20
	"	" Trans. & Ex "	2 95
	"	" " " Burdick	1 25
Nov	1	Salary, Burness	50
	2	Execution, B & J. Riley	1 25
	"	" Colvin et al	1 25
	4	½ rent old quarters	145 83
	12	costs York case	16 45
	16	Powers. Trans. Morrisey	1 25
	19	Collecting coupons, Holdrege bonds,	4 58
Dec.	1	Salary, Burness	50
	"	½ rent old quarters	145 83
	6	Execution Colvin et al & Riley	2 20
	"	" Gridley, et al	1 25
	27	½ rent old quarters	145 83
	"	Troll. Sbf. Pruyn case	21
1898			
Jany	3	Burness, salary	50
	7	Execution, Gridley & Morrison	1 20
	17	Stamped envelopes & Stamps	5
		Ford.	9576

471 Dr. Expense. Page 15 of Exhibit "33".

1898		Brt ford,	9576	
Feby.	1	Burness, salary	50	
	"	Porter, for moving pictures		50
	10	Rec. deed Baird to K. Toft prop.	1	15
	"	" " " Brown to Bank, Smith's Add.	1	15
	11	W. H. Thompson, fees Om. Coffin case	3	
	24	World-Herald Adv. annual mtg.	2	16
		McDonald Shf. Om. Coffin case	1	50
Mch.	1	Burness salary	50	
	"	Rubber bands & car fare		55
	4	Long (J. P.) Richards suit	2	75
	7	Rec. deed Parrotte (George) to Bk	1	15
	8	Long. Trans. judgt. Richards	1	25
	11	" " " Guill	3	65
	"	Clk. D. C. Exec. M. & W. C. Cain	1	25
Apl	1	Burness, salary	50	
	7	Stamped envelopes	4	10
	4	McDonald Shf. Exec. M & W. C. Cain	1	20
	15	Collecting coupons Holderge bonds	3	93
	18	G & Moody certificate surety bond	1	
	30	Burness, salary	50	
May	16	Lighton. Deposition Youlen case	8	80
	17	Broadwell & wife, witness " "	4	
June	2	Burness, salary	50	
	4	Snowden. Exec. Krag & Thielgaard	1	10
	30	Burness, salary	50	
July	15	Blackburn, costs Graham suit	3	15
Augt.	1	Burness, salary	50	
	"	Stamped envelopes & stamps	5	
	5	Prichard (J. P.) costs Graham case	3	75
	2	Revenue stamps	1	
	12	Clk. D. Crt. Exec. Hamilton	1	25
	31	Burness, salary	50	
July	26	McGowan, Brk. sidewalk Kountze Place	122	72
Augt	31	" " E. V. Smith Add.	60	80
Oct.	6	Revenue Stamps	1	
	1	Burness, salary	50	
Nov.	"	" " Oct. salary	50	
	2	Jones Court Clk. costs Youlen case	30	85
	4	Clk. D. Crt. execution Walsh	1	25
	15	Garbage contr. cleaning vault Prospect Place	5	20
	30	Burness, salary	50	
Dec.	6	Cunningham witness fees Stoddard case	2	
	"	Murphy " " " "	2	
	"	Reg. deeds " " " "	2	
	2	Clk. Crt. Exec. Fleishman et al	1	25
	5	Stamps & envelopes stamped	4	18
	9	McDonald & Shf. Exec. Fleishman et al	2	20
	10	Clk. crt. Exec. Briggs Place Bldg. Assn.	1	25
	13	Thomas, Constable fees, Cooley, case		75
	31	Burness. salary	50	
		Ford	10471	79

472 In Account with American National Bank. Cr.

1899		Brot Ford	10471	79
Jany	9	Revenue stamps	1	
	20	Adv. notice annual mtg.	2	
	3	Revenue stamps & stamped envelopes	5	36
	"	Memorandum pads		50
	23	Printing Brf. for Sup. Crt. Doolittle et al	11	50
	19	McDonald Shf. Exec. Briggs Place Bldg. Assn.	1	10
	"	" " Subpoena Stodard case	1	40

Feby.	1	Burness, salary & car fare	50 10
	"	Rec. deed 2" Lot 16 Sec. 21-15-13	1 25
	"	W. A. Foster, Spl. Master Sale Lot 2 Blk. 6 Paddock Place	20
	7	Clk. Crt. costs Williams-Nattinger case	21 63
Apri	13	Russell & Co. abstract to Dallas Co. farm	7 50
		costs Youlen & Cole	11 05
Feby	13	Clk. Crt. Exec. Wasserman	1 25
Mch.	"	McDonald Shf. "	1 20
	1	Burness, salary & car fare	50 10
	"	Recording Mtge. Wooley to Bk.	1
	11	Revenue stamps	1
Apl	1	Burness, salary	50
	3	Postage stamps	50
	11	Revenue stamps	1
	"	Stamped envelopes & Rev. stamps	5 50
	17	W. T. Wattles, examining Boone Co. lands	12 30
May	1	Burness, salary	50
	3	Clk. Dist. Crt. Exec. Taylor & Boyd	1 25
	8	Wyman, Releasing Jdgt. Nelson & Mtg. Howell Place	75
	18	Vlk. Dist. Crt. Exec. McEathron	1 25
June	1	Burness, salary	50
	16	Clk. Dist. Crt. Exec. D. H. Seaver	1 25
	17	" " " Petition P. Mergen	2 50
	26	McDonald Shf. Ex. Taylor & Boyd	1 20
		" " " McEathron	1 20
		" " Notice Steinberg et al	85
		" " Order " "	85
		" " " " "	4 15
		" " Exec. D. H. Seaver	1 10
		" " Summons P. Mergen	85
	30	Burness, salary & car fare	50 45
July	11	Messick Steno. services Steinberg case	8
	20	Revenue stamps	1 50
Augt	1	Burness, salary	50
	"	Rec. Assignments to Lot 4 B 316	2 20
		Curtis Lot, from McC Invt. Co.	
	11	Revenue stamps	1
	14	Stamped envelopes	4 36
Sept	1	Burness, salary	50
	2	Blackburn, costs Walworth case	10
	9	Clk. Dist. Crt. Exec. Paul Platz	2 50
	26	" " costs Steinberg case	11 13
	"	McDonald Shf. Exec. Paul Platz	2 20
	"	" Summons &c. Steinberg case	5 60
		Ford.	11046 17

473

Page 16 of EXHIBIT "33"

Dr. Expense.

1899		Brot. ford	11046 17
May	9	Clerks costs Re. Lot 2 Blk 6 Paddock Place	14 65
	10	Rec. Spl. Master's deed for above	1 50
Sept	30	Burness, salary	50
Oct	5	" expense to Dawson, Ia	1 95
	"	Revenue stamps & Postage	2
	19	Exchange Randolph's draft	12
Dec	13	" " "	50
Nov.	9	Revenue stamps for deed	2 50
	"	Releasing Pierson Judt.	60
1900		Burness, salary to 1-7-00	241 93
Jany	23	Clk. Dist. Crt. Exec. J. W. & G. Paul	1 25

Feby.	2	McCague Invt. Prem. Ins. Prospect Place house	8
	"	World Herald Av. meeting	1 50
	6	Clk. Dist. Crt. Exec. Stringer	1 25
	9	Jno. Powers, Shf. " " & Paul	2 20
	13	Blackburn, costs Bartlett suit	2 50
		" " J. N. Grill	2 50
		" " L. J. Cooley, et al	2 50
		" " Office Hardy	1 20
		" Sheriff	1 45
	15	Stamped envelopes & stamps	4 50
	21	Burness, salary	50
Mch	14	Clk. U. S. Crt. copy order	1
	15	Burness, salary & car fare	50 75
April	5	Broadwell Clk. costs Baldwin	9 33
		" Costs & Releasing, Eldridge judgment	2 15
Mch	10	" " " "	1 25
Apl	3	Burness, salary	50
	9	Revenue stamps deed to Dallas Co. Ia. farm	16 50
		Mailender Place, Furnas Co. land & Millard & Caldwell's Add.	
	10	Telegram to J. W. Russell	1 19
	11	Reg. Deeds Mailender place deed	1 15
		Clk. Dist. Crt, Exec. Nichol & Wilkinson	2 50
Atty. fees			
	30	W. H. Thompson, services Steinberg case	~~100~~
		" costs " "	4 65
May	3	Burness, salary	75
	2	Powers, Shf. Exec. Nichol & Wilkinson	2 20
	7	Clk. U. S. Crt. copy order	1 00
	"	" " " "	1 55
June	5	Burness, salary	75
Mch	12	Exchange Springfield Gravel Co. chk	10
June	18	Burness, salary	50
	21	Broadwell, clk. Execn. Williams & Winter	2 50
	29	" " Costs Steinberg case	40 48
	1	Abstract Millard & Caldwell's Addn.	31 50
	"	" Marion Place	6 50
		" Lot 8 B. 121 So. Omaha	17
July	25	Burness, salary	75
	"	Revenue stamps & car fare	1
	16	Broadwell, Clk. Exec. M. T. Murphy	1 25
Augt.	3	E. J. Hicks, Rec. deed to Betts Monmouth Park lot	1 35
		Ford,	11962 67

474 In Account with the American National Bank. Cr.

1900			
		Brot. ford.	11962 67
Augt	7	Burness, salary	75
	11	Fawcett Bill of Excep. Bkrs. Bldg. & L. Assn.	12 25
	31	Burness, salary	50
Sept	17	Thompson, Printing Brf. Coffin Mfg. Co.	9 50
Oct	4	Burness, salary	70
	15	Powers, Shf. Exec. Murphy & Williams	2 20
	22	Clk. Dist. Crt. " Doolittle & Baldwin	1 25
	"	Recording deeds to Bowling Green lots	1
	31	Burness. salary	75
Nov.	6	Revenue stamps & Cert. U. S. Clk. Galena Axle Grease stock	1 45
	24	Chas. Battelle, Trans. & Adv. costs Bkrs. Bldg. & Loan Assn.	17

Dec.	3	Burness, salary	75	
	7	Clk. Dist. Crt. costs Cooley & S case	2	50
	8	" U. S. Clr. Crt. costs	10	
	6	Weaver & Giller, Steinberg case	500	
	17	Powers Shf. Exec. Doolittle & Baldwin	1	20
	"	" " " Cooley & S	1	55
	31	Burness, salary	75	
1901				
Jany	5	Postage & Revenue stamps	1	45
		Calender .10 Car fare .30, Dumont claim .50		90
	18	Repairs Kountze Place (filing same) (old bill)	1	02
Feby	1	Burness, salary	75	
	21	Broadwell, Clk. Adv. costs McMahon	2	50
	23	" " " Theo. Olsen	2	50
	28	Burness, salary	75	
Mch	6	Co. Court, Exec. Stevens & Son	1	25
	7	Broadwell, Clk. J. Fawcett	2	50
	21	Powers, Shf. Summons "		85
		" " McMahon		95
		" " Olsen	1	05
Feby	27	Broadwell, Clk. costs, Curtis	4	08
	"	" " " " et al	4	18
Mch	30	Burness, salary	75	
Apl	10	Revenue & postage stamps	1	
	16	Releasing, McConnell Judgt.	1	10
"	25	Powers Shf. Exec. Stevens		75
	30	Burness, salary	75	
Mch	"	Broadwell, Clk. Exec. Am. Asphalt Co. & Burdick	2	50
May	20	Powers, Shf. " " " "	2	20
	29	Burness, salary	112	50
June	17	Broadwell, Clk. Exec. H. A. Worley	1	25
	"	Reg. Deeds, Rec. deed Ackerman Place	1	15
	29	Burness, salary	75	
Mch	30	Rep. roof house, Prospect Place	5	07
	10	Connor, Com. sale Lots in So. Omaha	50	
	10	Extending abstract, Lot So. Omaha	3	
July	2	Powers, Shf. Exec. H. A. Worley	1	10
	31	Burness. Salary	75	
Augt.	"	" "	75	
Sept	30	" "	75	
Oct	31	" "	75	
		Ford,	13822	42

475 Page 17 of EXHIBIT "33".

1901		Brot. ford,	13822	42
Augt	31	Com. sale Lot 12 B. 32 Ambler Place	25	
	"	Abstract for above	18	50
	2	1-5th costs Dufrene v. Loveland case for division of land (Squires) near Deaf & Dumb Institute	28	35
1897				
Jany	19	Prem. Ins. Prospect Place, prop.	9	60
Feby	16	Toft Place plumbing reprs.	10	
Apri	3	Kountze Place " " Hannighen,	144	
1898				
Feby	17	J. E. Markel, ½ Brower's note, Waterloo property	32	
	"	" " " " .½ rent Waterloo property	44	55
1900				
June	27	" " " " less taxes	99	41
Augt	25	" " sale old mill	100	
1901				
Feby	1	" " 1st payment less taxes	30	24
June	9	" " Rent	94	62
			$14458	69

476 Page 18 of EXHIBIT "33".

The Following Notes Held in the "Loans & Discount" Account, have been settled by compromised and otherwise adjusted or wiped out by the parties taking advantage of the bankrupt law.Some payments have also been made on account.

T. W. Blackburn	275		Settled by services rendered		
C. M. Brewster	23		Bankruptcy		
S. S. Beebe	64		"		
N. E. & S. D. Barkalow	100		Paid, should now read	$550	550
Luther S. Cushing	2697	03	" " " "	$2750	2750
Chas. E. Clapp & W. W. Williams	775		Compromised		
S. S. & C. E. Curtis	1200		"		
S. S. Curtis	2500		Transferred to judgment act.		
"	90		" " "		
" & F. J. Sackett	2639	48	" " "		
" "	274	50	" " "		
H. A. Doud	2		Paid should now read $248		248
J. H. Dumont	23	75	" " " "		1976 25
Dawson Brick Co.	3700		Reed. act. sale plant $182.97		
Jno. F. & C. J. Flack } Jno. F. Flack Co. }	1200		Bal. charged to P. & L. Paid $300 more to be paid when balance will be charged To Profit & Loss		
Ford & Charlton Music Co.	1249	74	Paid $165. bal. to P. & L.		
H. R. Gould	135		Paid, should now read		170
J. Q. Gaston	55	05	Deceased, charged to P. & L.		
G. J. Hunt	1		Paid should now read		2249
C. F. & H. F. Haman	215		" " " "		1035
C. F. Harrison & C. A. Goss	478	20	Compromised for 100. &		
J. J. Hannighen	203	84	Paid (deed to lot in Ackerman Place.		
J. P. Mallender	515		Bankruptcy		
H. W. & E. M. Mathews	100		Paid, should now read		1900
N. B. Ours	17	50	Bankruptcy		
W. S. Seavey	70		"		
C. H. Walworth	3500		Compromised for $300		
Hy. F. Wyman	240		Paid in full		
Geo. S. & E. Wallace	8		Paid $1. on each note		
D. C. Patterson	1		" should now read		1147 25
Kirstine Jessen	10		Paid		
	$22363	09			
As shown per statement of Oct. 8th 1899	205847	22			
Add Nason Bros. notes, less $100 paid	1650				
	207497	32			
Deduct above	22363	09			
Total Oct. 31st 1901	$185134	23			

477 Page 19 of EXHIBIT "33"

STOCKS, SECURITIES, CLAIMS &c.

The following alterations should be made in above accounting, viz:

STOCKS

50 shares Galena Axle Grease Co's stock sold for $2247.75 Balance charged to Profit & Loss

BONDS.

5 McCague Invt. Co. 2nd Series "D" Debenture bonds sold for $500. Balance charged to Profit & Loss.

JUDGMENTS.

Apollo Club	99 25	Sold to G. A. Magney for $70 Bal to P & Loss
E. H. Duncan	41 27	Bankruptcy, charged to P & Loss
F. R. McConnell	380 43	Compromised for $200 unclaimed bal. of 83.33. Bal. charged to P. & L
N. B. Ours	1233 39	Bankruptcy, charged to P & Loss
E. B. & Pauline Chapman	596 42	" " "
Broken Bow Roller Milling Co. S. J. Lonergan	1051 92	Sold for $10, Lorengan, Bankpt. Bal. charged to P & Loss
Briggs Place Bldg. Assn. et al	1917 49	Sold for $1000. Bal charged to P. & L.
E F. Fleishman, Steinberg et al	517 09	Assigned & settled
W. H. Eldridge	211 34	Compromised for $100, Bal. P. & L.
R. I. Mattice	2067 52	Bankruptcy, chgd. to P & Loss
W. N. Williams & Hy. M. Morrow	459 52	Compromised for $100. Bal to P & Loss.
" "	568 44	
Doolittle & Baldwin Cr. with act. Quit claim to Lot	25	No equity in Lot to Bank
There has been added to this account, S. S. Curtis, Jdgt.	3673 75	
F. J. Sackett	4306 15	
The total of this account, viz: Stocks, Securities & C. is now at this date, Oct. 31, 1901	$42338 40	

478 Page 20 of EXHIBIT "33"

REAL ESTATE

The following alterations and additions should be made in this account as per statement of October 8th, 1899 already in evidence.

Ambler Place, Lot 12 Block 32.	Contract of sale made $500
So. Omaha, Lot 7 " 121	" " " $500
" " 8 " "	Sold for $800.
Kountze Place Lots 1 & 2 Block 17.	Mortgagee has taken this on nominal payment to Bank.
Douglas Co. undivided ½ interest in Waterloo property, 23 acres and E. ½ N. E. ¼ Sec. 10-15-10 and S. W. ¼ N. W. ¼ Sec. 11-15-10	Sold for $3500. (½ to Bank)
Dallas Co. Iowa, S ½ N. W. ¼ & N. ½ S. W. ¼ Sec. 13 and N. E. ¼ Sec. 16-81-29	Sold for $12,800, less mortgage $5000 & Int. $300.

Dallas Co. Iowa, S. E. N. W. & part N. E. S. W. Sec. 10-81-29 with brick plant	Sold for $3000. Bank's proportion $182.97
ADDITIONS TO,	
2 inches tax lot 16, Sec. 21-15-13	
Undivided 1-8 W ½ N. E. ¼ N. E. ¼ 6-15-13 Douglas Co. divided	Bank holds 2½ acres.
Bowling Green, Lots 4, 5, 6, & 7 Block 8	From Flack, Jno. F.
Ackerman Place Lots 2 Block 7	" C. F. Harrison
Douglas Co. Undivided 1-5 in S. ½ S. W. N. W. ¼ Sec. 8-15-13	Since divided, Bank holds Lot 2.

Millard & Caldwell's Addn. East 30' ex No. 10' of Lot 28 Sold to G. W. Luce for $1250 certified check deposited in First Natl. Bank, Deed not passed.

479 COPY OF EXHIBIT "34".

Certificate for Certified Copy.

Treasury Department,
Office of the
Comptroller of the Currency—ss.

Under the provisions of Section 884 of the Revised Statutes of the United States, I, Wm. B. Ridgely, Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original certificate of Henry F. Wyman, Cashier, The American National Bank of Omaha, Nebraska, relative to voluntary liquidation of said Bank, and of the whole of such original on file and of record in my office.

In Testimony Whereof, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents, at the Treasury Department, in the City of Washington and District of Columbia, this twenty-eighth day of October A. D. 1901.

[Seal] WM. B. RIDGELY,
Comptroller of the Currency.

Certificate for Voluntary Liquidation.
No. 4087.

American National Bank,
Omaha, Nebr., Feby. 27th, 1896.

To the Comptroller of the Currency,
Washington, D. C.

Sir:

It is hereby certified, in pursuance of Sections 5220 and 5221 of the Revised Statutes of the United States, that at a
480 meeting of the Stockholders of the American National Bank, located at Omaha, in the State of Nebraska, duly notified and held pursuant to law and the Articles of Associa-

tion of said Bank at the office of said Association at Omaha, Nebraska, aforesaid, on the 25th day of February, 1896, it was voted by the Stockholders of said Association, owning two-thirds of its stock, that said Association go into liquidation and be closed.

In Testimony Whereof, I have, by instruction of the Board of Directors of said Association, hereto subscribed my name and affixed the seal of said Association at Omaha, Nebraska, aforesaid, the day and year above written.

[Place for Seal] HENRY F. WYMAN, Cashier.

481 United States of America,
State and District of Nebraska,
County of Douglas—ss.

I, G. S. Waring, Notary Public, in and for the State and County aforesaid, do hereby certify that William Baird, Henry F. Wyman, H. E. Rainey, James Burness and G. W. Wattles were by me first severally duly sworn to testify the truth, the whole truth and nothing but the truth, and that the depositions by them respectively subscribed as above set forth, were reduced to writing by myself, and were respectively subscribed by the said [witnessed] in my presence, and were taken at the time and place in the annexed notice specified; that I am not counsel, [sttorney] or relative of either party, or otherwise interested in the event of this suit; and said depositions were commenced at the time in said notice specified and continued by adjournments from day to day or to dates agreed upon by the parties, as appears in said depositions.

In Testimony Whereof, I have hereunto subscribed my name and affixed my Notarial Seal, this 30th day of November, 1901, at Omaha, Nebraska.

[Seal] G. S. WARING,
Notary Public.

Indorsed: Filed Dec. 30, 1901. Geo. H. Thummel, Clerk.

Notary's Fees	
538 folios of testimony at 20c.	107 60
Swearing 5 witnesses	50
Certificate	25
	108 35

The above fees pd by complainant.

482 Thereupon afterwards, to-wit: On the 23rd day of May 1903 Petition for Appeal and Assignment of Errors

was filed in said case, which said Petition, etc., is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

Sumner Wallace,
Doc T. vs. No. 261.
American National Bank, et al.

Petition for Appeal and Assignment of Errors.

To the Court:

Edgar M. Morsman one of the defendants in the above entitled cause, shows that the final decree herein adjudges him to pay to the complaniant the sum of $1744.50 and to pay the Union National Bank the sum of $5,547.75; that said final decree is prejudicial and erroneous as follows, to-wit:

Assignment of Errors.

(1) The Circuit Court erred in rendering the decree against this defendant because said Court had not jurisdiction of said cause, that is to say: the complainant, sues as the assignee of a chose in action, to-wit: a non-negotiable promissory note executed by the American National Bank of Omaha as maker and in favor of Union National Bank of Omaha as payee each of whom was at the time of the execution and delivery of said note and at the time of the filing of the original and amended Bills a citizen and resident of the State of Nebraska.

(2) The Circuit Court erred in rendering the decree against this defendant because said court had not jurisdiction of said cause, that is to say: The said American National Bank
483 had not gone into voluntary liquidation pursuant to section 5220 of the Revised Statutes of the United States at any time prior to the rendition of said decree.

(3) The Circuit Court erred in rendering said decree against this defendant because said court had not jurisdiction of the cause, that is to say; the complainant had not reduced his claim to judgment against the American National Bank and exhausted his remedy at law.

(4) The Circuit Court erred in rendering said decree against this defendant and in adjudging this defendant to pay to the complainant Sumner Wallace, the sum of $1744.50 because the agreement between the American National Bank and the Union National Bank, dated Dec. 21, 1895, a copy of which is attached to the Amended Bill of Complaint, as Exhibit "A"

and the alleged promissory note, set out in the said Bill are ultra vires and void and create no liability for which shareholders are responsible.

(5) The Circuit Court erred in rendering the said decree against this defendant and in adjudging this defendant to pay the said complainant the sum of $1744.50 because the obligation of the American National Bank sued on is not an obligation incurred, contracted or assumed in the course of the business of banking.

(6) The Circuit Court erred in rendering said decree against this defendant and in adjudging this defendant to pay the sum of $5,547.75 to the Union National Bank, because the Agreement between the American National Bank and the Union National Bank dated Dec. 21, 1895, a copy of which is attached to the Amended Bill of Complaint and the alleged promissory notes set out in the answer or claim of the Union National Bank are ultra vires and void and create no lia-
484 bility for which shareholders are responsible.

(7) The Circuit Court erred in rendering said decree and in adjudging this defendant to pay to the Union National Bank the sum of $5,545.75 because the claim of the said Union National Bank is founded upon an alleged obligation of the American National Bank which was not incurred, assumed or contracted in the business of Banking.

(8) The Circuit Court erred in rendering the said decree and in adjudging this defendant to pay to the Union National Bank the sum of $5,547.75 because said court had not jurisdiction of this defendant as to said claim.

(9) The Circuit Court erred in not rendering a decree for this defendant.

Wherefore this defendant prays that an appeal be allowed with supersedeas and for a Citation.

EDGAR M. MORSMAN,
By W. W. Morsman, Solicitor.

Indorsed: Filed May 23 1903. Geo. H. Thummel, Clerk.

485 Thereupon afterwards, to-wit: On the 23rd day of May, 1903, Supersedeas Bonds were filed in said case, which said Bonds are in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

Sumner Wallace, Complainant,
Doc. T. vs. No. 261.
American National Bank of Omaha, et al., Defendants.

Supersedeas Bond.

Know all Men by These Presents: That we, Edgar M. Morsman, of the County of Douglas and State of Nebraska, as principal and Casper E. Yost of the same County and State, as surety, are jointly and severally held and firmly bound unto Sumner Wallace his heirs and assigns, in the penal sum of Three Thousand Dollars ($3,000) lawful money of the United States well and truly to be paid.

The Condition of the foregoing obligation is such that:
Whereas the above bounden Edgar M. Morsman has appealed from the decree and judgment of the Circuit Court of the United States for the District of Nebraska, in a certain cause therein pending wherein the said Sumner Wallace is complainant and the said Edgar M. Morsman is a defendant, and wherein judgment was rendered against the said Edgar M. Morsman for the sum of $1744.50 Dollars in favor of the said Sumner Wallace,

Now Therefore, if the said Edgar M. Morsman, appellant in said cause shall prosecute his said appeal to effect, and answer and pay all damages and costs, if he fail to make good his plea, then this obligation to be null and void, but otherwise in full force and virtue.

486 Witness our hands the 13th day of May A. D., 1903.

EDGAR M. MORSMAN,
CASPER E. YOST.

Bond & Surety Approved.
W. H. MUNGER, Judge.

Indorsed: Filed May 23, 1903. Geo. H. Thummel, Clerk.

487 In the Circuit Court of the United States for the District of Nebraska.

Sumner Wallace, Complainant,
Doc. T. vs. No. 261.
Union National Bank of Omaha, et al., Defendants.

Supersedeas Bond.

Know all Men by These Presents: That we, Edgar M. Morsman, of the County of Douglas and State of Nebraska, as prin-

cipal and Casper E. Yost of the same County and State, as surety, are jointly and severally held and firmly bound unto Union National Bank, its successors and assigns in the penal sum of Seven Thousand Five Hundred dollars ($7,500) lawful money of the United States well and truly to be paid.

The Condition of the foregoing obligation is such that:

Whereas the above bounden Edgar M. Morsman has appealed from the decree and judgment of the Circuit Court of the United States for the District of Nebraska, in a certain cause therein pending wherein the said Sumner Wallace is complainant and the said Edgar M. Morsman is a defendant, and wherein judgment was rendered against the said Edgar M. Morsman for the sum of ($5547.75) Dollars in favor of the said Union National Bank of Omaha, Nebraska.

Now Therefore, if the said Edgar M. Morsman, appellant in said cause shall prosecute his said appeal to effect, and answer and pay all damages and costs, if he fail to make good his plea, then this obligation to be null and void, but otherwise in full force and virtue.

488 Witness our hands the 13th day of May A. D., 1903.

EDGAR M. MORSMAN.
CASPER E. YOST.

Bond & Surety Approved.
W. H. MUNGER, Judge.

Indorsed: Filed May 23, 1903. Geo. H. Thummel, Clerk.

489 Thereupon afterwards, to-wit: On the 1st day of July 1903, "Precipe for Transcript on Appeal of Edgar M. Morsman" was filed in said case, which said Precipe is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

Sumner Wallace,
No. 261. vs. Doc. T.
American National Bank, et al.

Precipe for Transcript on Appeal of Edgar M. Morsman.

To the Clerk of Said Court:

Please make a transcript of the following parts of the record in the above entitled cause for appeal to the United States Circuit Court of Appeals, to-wit:

1. The original Bill, filed August 18, 1898.

2. The Memorandum Opinion of Judge Munger, filed Sep. 29, 1899

3. The Motion to appoint James Burness, Trustee, filed Dec. 5, 1899

4. The Order appointing James Burness, Trustee, entered Jan. 8, 1900.

5. The order granting leave to complainant to file Amended Bill of Complaint, entered February 7, 1900.

6. The Amended Bill of Complaint, endorsed "Filed Feby. 17, 1900," also endorsed "Re-filed Jany. 8 1901".

7. Order granting leave to re-file Amended Bill of Complaint entered Jany 8 1901.

8. The Separate Answer of Edgar M. Morsman to the Amended Bill of Complaint filed Jany 24, 1901.

9. The Answer of Union National Bank to the Amended Bill of Complaint filed August 2, 1901.

10. The general Replication to the answers of all defendants, file August 2nd, 1901.

11. All of the evidence and depositions.

12. Record entry July 1st, 1902, showing the case heard on proofs and submitted.

490 13. The Memorandum Opinion of Judge Munger, filed Sep. 1, 1902.

14. The Order confirming sale of assets entered Dec. 9 1902.

15. The Order Confirming Final Report of Burness as Trustee, entered Jan 3 1903.

16. Memorandum Opinion of Judge Munger, filed April 24, 1903.

17. The Final Decree entered May 23rd 1903.

18. The Petition for Appeal and Assignment of Errors of Edgar M. Morsman, filed May 23, 1903.

19. The Supersedeas Bond of Edgar M. Morsman in favor of Sumner Wallace filed May 23rd 1903.

20. The Supersedeas Bond of Edgar M. Morsman in favor of Union National Bank, filed May 23 1903.

21. This Precipe and Notice.

W. W. MORSMAN,
Attorney for Edgar M. Morsman.

To Sumner Wallace and Union National Bank:

You will take notice that Edgar M. Morsman, a defendant, in the above entitled cause, deems the parts of the record specified in the foregoing Precipe all that is necessary for the hearing, on his appeal, in the United States Circuit Court of Appeals.

W. W. MORSMAN,
Solicitor for Edgar M. Morsman.

Received Copy of the foregoing Precipe and Notice this 3rd day of June, 1903. HALL & McCULLOCH,
Counsel for Sumner Wallace and Union National Bank.

Indorsed: Filed July 1, 1903. Geo. H. Thummel, Clerk.

491 Thereupon afterwards, to-wit On the 23rd day of May, 1903, Petition for Appeal and Assignment of Errors" was filed in said case, which said Petition and Assignment are in words and figures following, to-wit:

In the Circuit Court of the United States [ihn] and for the District of Nebraska.

Sumner Wallace, Complainant,
No. 261 vs. Doc. T.

American National Bank, a corporation, The McCague Investment Company, a corporation, Thomas H. McCague, Alex. G. Charlton, Elmer C. Brownlee, Elizabeth Dufrene, Executrix of the last will and testament of Alfred H. Dufrene, deceased, Edgar M. Morsman, Philip Mergin, George G. Wallace, William S. Poppleton, John S. King, William Wallace, Charles F. Manderson, Anna C. Crowell, Charles C. George, Robert H. McClellan, Peter Frenzer, John N. Frenzer, Charles H. Walworth, Frank W. Wessells, Frank Graham, James H. McCulloch, John P. Charlton, C. W. Morton, Royal Wilson, Jacob Wead, James J. Brown, Jr., James J. Woodward, Viola Coffin, Howard B. Smith, Edward G. Glenn, Emily J. Robinson, James H. Morton, George Morton, Mary E. Morton, William Wilson, Henry F. Wyman, Albert U. Wyman, F. R. McConnell, Trustee, John Speer, John E. Patrick, R. L. Brownlee, Caroline Carpenter, William C. Beer, Marcus C. Acheson, George Marples, Arthur H. Flack, Meade C. Williams, James H. Conrad, T. R. Neal, J. H. Hawkins, William Baird, The Manufacturers' National Bank of Boston, Mass., a corporation, John L. McCague, Morris Levy, National Bank Building Company of America, a corporation, John L. McCague, Thomas H. McCague, William L. McCague and Alex. G. Charlton, partners doing business under the firm name and style of McCague Bros., Rufus B. Bullock, Thomas L. Kimball, Thomas L. Kimball, Trustee, Alex H. Charlton, Secretary, Samuel Blackwell and the Union National Bank of Omaha, Nebraska, Defendants.

Petition for Appeal.

Now come Elmer C. Brownlee, George G. Wallace, Charles C. George, Peter Frenzer, John N. Frenzer, Howard B. Smith,

Henry F. Wyman, Albert U. Wyman, Morris Levy, defendants in the above entitled action and now comes each of said defendants, and conceiving themselves and each conceiving himself aggrieved by the decree made and entered in the
492 above entitled cause on the 23 day of May 1903, do, and each of them does hereby appeal from said decree to the United States Circuit Court of Appeals for the Eighth Circuit for the reasons specified in the assignment of errors filed herewith, and pray, and each of them prays, that this appeal may be allowed and that a transcript of the records, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Court of Appeals for the eighth Circuit.

Dated, May 23 1903.

ELMER C. BROWNLEE,
GEORGE G. WALLACE,
CHARLES C. GEORGE,
PETER FRENZER,
JOHN N. FRENZER,
HOWARD B. SMITH,
HENRY F. WYMAN,
ALBERT U. WYMAN, and
MORRIS LEVY.

By Howard B. Smith, their solicitor.

Indorsed: Filed May 23, 1903. Geo. H. Thummel, Clerk.

493 In the Circuit Court of the United States [ihn] and for the District of Nebraska.

Sumner Wallace, Complainant,
No. 261 vs. Doc. T.

American National Bank, a corporation, The McCague Investment Company, a corporation, Thomas H. McCague, Alex. G. Charlton, Elmer C. Brownlee, Elizabeth Dufrene, Executrix of the last will and testament of Alfred H. Dufrene, deceased, Edgar M. Morsman, Philip Mergin, George G. Wallace, William S. Poppleton, John S. King, William Wallace, Charles F. Manderson, Anna C. Crowell, Charles C. George, Robert H. McClellan, Peter Frenzer, John N. Frenzer, Charles H. Walworth, Frank W. Wessells, Frank Graham, James H. McCulloch, John P. Charlton, C. W. Morton, Royal Wilson, Jacob Wead, James J. Brown, Jr., James J. Woodward, Viola Coffin, Howard B. Smith, Edward G. Glenn, Emily J. Robinson, James H. Morton, George Morton, Mary E. Morton, William Wilson, Henry F. Wyman, Albert U. Wyman, F. R. McConnell, Trustee, John Speer, John E. Patrick, R.

L. Brownlee, Caroline Carpenter, William C. Beer, Marcus C. Acheson, George Marples, Arthur H. Flack, Meade C. Williams, James H. Conrad, T. R. Neal, J. H. Hawkins, William Baird, The Manufacturers' National Bank of Boston, Mass., a corporation, John L. McCague, Morris Levy, National Bank Building Company of America, a corporation, John L. McCague, Thomas H. McCague, William L. McCague, and Alex. G. Charlton, partners doing business under the firm name and style of McCague Bros., Rufus B. Bullock, Thomas L. Kimball, Thomas L. Kimball, Trustee, Alex. H. Charlton, Secretary, Samuel Blackwell and the Union National Bank of Omaha, Nebraska, Defendants.

Assignment of Errors.

And now on this 23 day of May 1903, Elmer C. Brownlee, George G. Wallace, Charles C. George, Peter Frenzer, John N. Frenzer, Howard B. Smith, Henry F. Wyman, Albert U. Wyman and Morris Levy, defendants in the above entitled action, come, and each of them comes, by their solicitor, and say; and each of them says, that the decree in said cause
494 is erroneous and against the just rights of these defendants and each of them for the following reasons, to-wit:

1. That said Circuit Court did not have jurisdiction over these defendants or either of them, because the complainant sued as the assignee of a chose in action, to-wit: (a non-negotiable promissory note) given by said American National Bank of Omaha, Nebraska, to said Union National Bank of Omaha, Nebraska, and each of these defendants, is a citizen and resident of Nebraska.

2. That said Circuit Court did not have jurisdiction of said cause, or of these defendants, or either of them, under the Act of Congress of June 30, 1876 (Supp. U. S. Rev. Stats. 107), because said American National Bank of Omaha had not gone into voluntary liquidation within the meaning of Sec. 5220 of the U. S. Revised Statutes or of any other of the banking laws of the United States; for the reason that said bank had no assets in its possession or under its control at the time certain of the shareholders of said bank voted to go into voluntary liquidation.

3. That said Circuit Court did not have jurisdiction of said cause or of these defendants, or either of them, under said Act of Congress of June 30, 1876, even if said American National Bank of Omaha had gone into voluntary liquidation, because said Amended Bill does not allege that complainant

or his assignor ever "presented his notes or other claims against the Association for payment" as provided in Section 5221 of the U. S. Revised Statutes.

4. That said Circuit Court did not have jurisdiction of said cause or of these defendants, or either of them, under the Act of Congress of June 30, 1876 (Supp. U. S. Rev. Stats. 107) because the complainant had not obtained judgment at law upon the note held by him and had not caused an execution to be issued thereon and returned nulla bona, and therefore, did not and could not file in said court a bill in equity in the nature of a creditor's Bill, as provided in said act.

495

5. Because the court finds and the decree adjudges that there is due from the American National Bank and the stockholders thereof to Sumner Wallace, complainant, upon the contract set out in the amended bill and the first of said notes, also set out in said amended bill, the sum of $46,524.83.

6. Because the court finds and the decree adjudges that there is due to said Union National Bank from said American National Bank and the stockholders thereof the sum of $147,941.52.

7. Because the court finds and the decree adjudges that each of these defendants is liable to the said Sumner Wallace and to the said Union National Bank in the sum set opposite his name, as follows:

From Elmer C. Brownlee, to the complainant, Sumner Wallace, the sum of	232 60	
From Elmer C. Brownlee to the said Union National Bank the sum of		739 70
From George G. Wallace to the complainant Sumner Wallace, the sum of	1744 50	
From George G. Wallace to the said Union National Bank, the sum of		5547 75
From Charles C. George to the complainant, Sumner Wallace, the sum of	348 90	
From Charles C. George, to the said Union National Bank, the sum of		1109 55
From Peter Frenzer to the complainant, Sumner Wallace, the sum of	348 90	
From Peter Frenzer to the said Union National Bank, the sum of		1109 55
From John N. Frenzer to the complainant, Sumner Wallace, the sum of	116 30	

	From John N. Frenzer to the said Union National Bank, the sum of			369 85
496	From Howard B. Smith to the complainant Sumner Wallace, the sum of	1163	00	
	From Howard B. Smith, to the said Union National Bank the sum of			3698 50
	From Henry F. Wyman to the complainant Sumner Wallace, the sum of	1354	89	
	From Henry F. Wyman to the said Union National Bank, the sum of			4308 75
	From Albert U. Wyman to the complainant Sumner Wallace, the sum of	2362	60	
	From Albert U. Wyman, to said Union National Bank, the sum of			739 70
	From Morris Levy to the complainant, Sumner Wallace, the sum of	1163	00	
	From Morris Levy to the said Union National Bank, the sum of			3698 50

8. Because the decree adjudges that the complainant, Sumner Wallace, have and recover of each of these defendants the sum set opposite his name, to-wit:

From Elmer C. Brownlee, the sum of	232 60
From George G. Wallace, the sum of	1744 50
From Charles C. George the sum of	348 90
From Peter Frenzer the sum of	348 90
From John N. Frenzer the sum of	116 30
From Howard B. Smith the sum of	1163 00
From Henry F. Wyman the sum of	1354 89
From Albert U. Wyman the sum of	232 60
From Morris Levy the sum of	1163 00

9. Because the decree adjudges that the Union National Bank have and recover of each of these defendants the sum set opposite his name, to-wit:

From Elmer C. Brownlee the sum of	739 70
From George G. Wallace the sum of	5547 75
From Charles C. George the sum of	1109 55
From Peter Frenzer the sum of	1109 55
From John N. Frenzer the sum of	369 85
From Howard B. Smith the sum of	3698 50
From Henry F. Wyman the sum of	4308 75
From Albert U. Wyman the sum of	739 70
From Morris Levy the sum of	3698 50

10. Because the decree adjudges that the said Sumner Wallace and said Union National Bank have judgment against

each of these defendants for the costs taxed at $..... against each of them.

11. Because the decree adjudges that execution be issued against each of these defendants.

12. Because the decree did not adjudge that each of these defendants was not liable to the complainant, Sumner Wallace, in any sum whatever.

13. Because the decree did not adjudge that each of these defendants was not liable to said Union National Bank of Omaha in any sum whatever.

14. Because the decree did not adjudge that each and all of these defendants, shareholders of the American National Bank of Omaha, was and were not liable in said action to said Union National Bank of Omaha, for the reason that said Union National Bank did not file a cross-bill in said action or otherwise plead therein except by an answer to the amended bill of complainant.

15. Because the decree did not adjudge that said American National Bank of Omaha was not indebted to said Union National Bank of Omaha before or at the time of the execution and delivery of the three notes in said amended bill described.

16. Because the decree did not adjudge that the execution and delivery of the contract or agreement set forth in the amended bill was ultra vires said American National Bank of Omaha.

17. Because the decree did not adjudge that the borrowing of money ($201,000.00) alleged in the amended bill from said Union National Bank by said American National Bank was ultra vires said American National Bank.

18. Because the decree did not adjudge that the execution and delivery of each of the three non-negotiable notes, due one, two and three years after date and drawing interest at 6% per annum from date, described in the amended bill, was ultra vires said American National Bank of Omaha.

19. Because the decree did not adjudge that the execution and delivery of the agreement and the giving of the notes mentioned in the amended bill were not within the powers incidental to the carrying on of the business of banking for which said American National Bank was established.

20. Because the decree did not adjudge that said American National Bank did not have power under Sec. 5136 of the

Revised Statutes of the United States to enter into said contract or to execute and deliver said notes.

21. Because the decree did not adjudge that said transaction to-wit, the execution of said agreement and the giving of said notes, was prohibited by the public policy of the United States as shown by the provisions of the Revised Statutes controlling the voluntary liquidation, involuntary liquidation and consolidation of national banks.

22. Because the decree did not adjudge that said transaction was prohibited by Sections 5145 and 5147 of the U. S. Revised Statutes.

23. Because the decree did not adjudge that said transaction was prohibited by Section 5202 of the U. S. Revised Statutes.

24. Because the decree did not adjudge that the transactions between said American National Bank of Omaha and said Union National Bank of Omaha set forth in the amended bill were not in the usual course of the banking business of said American National Bank, and that, for that reason, these defendants, shareholders of said American National Bank, were, and each of them was, not liable for any deficit
499 that might remain after the application of the assets of said bank to the payment of the three notes set forth in said Amended Bill.

25. Because the decree did not adjudge that the contract, debts, and engagements set forth in said amended bill were not duly contracted or entered into in the ordinary course of the business of said American National Bank of Omaha, and that, by reason thereof, the shareholders of said bank, to-wit; these defendants and each of them, were not liable to said complainant nor to said Union National Bank of Omaha, for the following among other reasons, to-wit:

(1) Because the transactions set forth in the amended Bill was not a borrowing of money by said American National Bank of said Union National Bank within the meaning of or within the powers conferred by the banking laws of the United States.

(2) Because the said American National Bank sold and assigned its business, its cash on hand, its office furniture and fixtures, and certain of its Bills Receivable to said Union National Bank.

(3) Because the agreement set forth in said amended bill provided that said Union National Bank should liquidate the assets of said American National Bank.

(4) Because in said agreement said American National Bank agreed to sustain and pay one-half the loss and expense which said Union National Bank might sustain on account of its removal from its present quarters by reason of its unpaid lease of its present place of business and one-half of the loss which it might sustain on the sale of its office furniture and fixtures.

(5) Because in said agreement said American National Bank guaranteed said Union National Bank against any and all loss on account of assuming its liabilities.

500

(6) Because in said agreement said American National Bank sold and assigned all of its remaining assets to said Union National Bank.

(7) Because the amount of the three notes mentioned in said amended bill was not determined and said notes were not signed until after said American National Bank had sold and assigned all its assets to said Union National Bank.

(8) Because said American National Bank was compelled to and did cease to do business as a bank.

(9) Because said American National Bank surrendered all control over its assets.

(10) Because its directors ceased to exercise any direction or control over its affairs or assets.

(11) Because said American National Bank entrusted to said Union National Bank all its assets to be sold, collected or compromised at the discretion of said Union National Bank.

(12) Because said American National Bank guaranteed that such assets should continue to be sufficient to meet the payment of the three notes set out in said amended bill.

(13) Because said American National Bank executed and delivered the three non-negotiable promissory notes mentioned in said amended Bill.

(14) Because said American National Bank agreed to pay interest at 6% per annum on $201,000.00 from and after Dec. 23, 1895.

(15) Because said American National Bank and the defendants, shareholders thereof, still remain liable for any valid indebtedness existing against said American National Bank at the time its assets were turned over to said Union National Bank.

501

Wherefore, these defendants pray and each of them prays that said decree be reversed and that said court may be directed to enter a decree dismissing said defendants and each of them with his costs.

Dated May 23 1903.

ELMER S. BROWNLEE,
GEORGE G. WALLACE,
CHARLES C. GEORGE,
PETER FRENZER,
JOHN N. FRENZER,
HOWARD B. SMITH,
HENRY F. WYMAN,
ALBERT U. WYMAN and
MORRIS LEVY.
By Howard B. Smith,
Their solicitor.

Indorsed: Filed May 23, 1903. Geo. H. Thummel, Clerk.

502 Thereupon afterwards to-wit: At the May 1903 Term of said Court, and on the 23rd day of May 1903, Order Allowing Appeal was signed and filed in said case, and entered of record on the Journal of Proceedings of said Court had on said day, to-wit:

Sumner Wallace, Complainant,
Doc. T. No. 261. vs In Equity.

American National Bank, a corporation, The McCague Investment Company, a corporation, Thomas H. McCague, Alex G. Charlton, Elmer C. Brownlee, Elizabeth Dufrene, Executrix of the last Will and testament of Alfred R. Dufrene, deceased, Edgar M. Morsman, Philip Mergin, George G. Wallace, William S. Poppleton, John S. King, William Wallace, Charles F. Manderson, Anna C. Crowell, Charles C. George, Robert H. McClellan, Peter Frenzer, John N. Frenzer, Charles H. Walworth, Frank W. Wessells, Frank Graham, James H. McCulloch, John P. Charlton, C. W. Morton, Royal Wilson, Jacob Wead, James J. Brown, Jr., James J. Woodward, Viola Coffin, Howard B. Smith, Edward G. Glenn, Emily J. Robinson, James H. Morton, George Morton, Mary E. Morton, William Wilson, Henry F. Wyman, Albert U. Wyman, F. R. McConnell, Trustee, John Speer, John E. Patrick, R. L. Brownlee, Caroline Carpenter, William C. Beer, Marcus C. Acheson, George Marples, Arthur H. Flack, Meade C. Williams, James H. Conrad, T. R. Neal, J. H. Hawkins, William Baird, The Manufacturers' Na-

tional Bank of Boston, Mass., a corporation, John L. McCague, Morris Levy, National Bank Building Company of America, a corporation, John L. McCague, Thomas H. McCague, William L. McCague, Thomas H. McCague, William L. McCague, and Alex. G. Charlton, partners doing business under the firm name and style of McCague Bros., Rufus B. Bullock, Thomas L. Kimball, Thomas L. Kimball, Trustee, Alex. G. Charlton, Secretary, Samuel Blackwell, and the Union National Bank of Omaha, Nebraska, Defendants.

Order Allowing Appeal.

On motion of the solicitor for each of the following named defendants in the above entitled action, to-wit: Elmer C. Brownlee, George G. Wallace, Charles C. George, Peter
503 Frenzer, John N. Frenzer, Howard B. Smith, Henry F. Wyman, Albert U. Wyman, Morris Levy, it is

Ordered in open court that an appeal to the United States Circuit Court of Appeals for the Eighth Circuit from the final decree heretofore filed and entered herein be, and the same is allowed, and that a certified transcript of the record, testimony, papers and proceedings herein be forthwith transmitted to said United States Circuit Court of Appeals. It is further

Ordered that the Bond on appeal for each of the defendants above named, who may desire to supersede said decree, shall be fixed at a sum which shall at least equal the amount adjudged against such defendant and interest thereon for a period of one and one-half years and costs taxed against him and that, upon the approval of such bond, said decree shall be superseded as to such defendant. It is further

Ordered that the bond on appeal for such of the defendants as to not desire to supersede said decree be fixed at the sum of $200.00 which shall be for costs only and shall, when approved, not operate as a supersedeas bond. It is further

Ordered that any or all of the defendants whose bond shall be approved, may join in such appeal without prejudice to any special or peculiar rights or defenses they or any of them may have and that one record only be transmitted to said United States Circuit Court of Appeals, which record shall be equally available to each and all of such defendants.

W. H. MUNGER, Judge.

Dated May 23 1903.

Indorsed: Filed May 23, 1903. Geo. H. Thummel, Clerk.

504 Thereupon afterwards, to-wit: On the 12th day of June, 1903, Bonds for Appeal were filed in favor of plaintiff and Union National Bank on behalf of the defendants Levy, J. N. & Peter Frenzer, George, and Wallace, and in favor of Union National on behalf of defendants Smith, Brownlee, A. U. & H. F. Wyman, which said Bonds are in words and figures following, to-wit:

In the Circuit Court of the United States in and for the District of Nebraska.

Sumner Wallace, Complainant,
No. 261 vs. Doc T.
American National Bank, et al., Defendants.

Bond for Appeal.

Know All Men By These Presents,

That we, Morris Levy principal, and Herman Cohn, surety are held and firmly bound unto the Union National Bank of Omaha, Nebraska, in the full and just sum of $4500.00 to be paid to the said Union National Bank of Omaha, Nebraska, its successors and assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with [out] seals and dated this 9th day of June in the year of our Lord, one thousand nine hundred and three.

Whereas lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska, in a suit pending in said court, wherein Sumner Wallace was plaintiff and the said Union National Bank of Omaha was one of the defendants, and said Morris Levy was one of the defendants, a decree was rendered against the said Morris Levy and
505 the said Morris Levy has obtained an order of the said court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

Now, the Condition of the above obligation is such, that if the said Morris Levy shall prosecute said appeal to effect and answer and pay all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

MORRIS LEVY
Sealed and delivered in presence of HERMAN COHN.
John C. Wharton.

Approved this 12th day of June 1903.
By W. H. MUNGER, Judge.

Indorsed: Filed Jun 12 1903. Geo. H. Thummel, Clerk.

In the Circuit Court of the United States in and for the
506 District of Nebraska.

Sumner Wallace, Complainant.
Doc. T. vs. No. 261.
American National Bank, et al., Defendants.

Bond on Appeal.

Know all Men by These Presents, That we Morris Levy principal, and Herman Cohn, surety, are held and firmly bound unto Sumner Wallace in the full and just sum of $1500.00 to be paid to the said Sumner Wallace, his heirs, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with [out] seals and dated this 9th day of June in the year of our Lord, One Thousand Nine Hundred and Three.

Whereas lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska in a suit pending in said Court, wherein Sumner Wallace was plaintiff and said Morris Levy was one of the defendants, a decree was rendered against the said Morris Levy and the said Morris Levy has obtained an order of the said Court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

Now, the Condition of the above obligation is such, that if the said Morris Levy shall prosecute said appeal to
507 effect and answer and pay all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

MORRIS LEVY [Seal]
HERMAN COHN [Seal]

Sealed and delivered in presence of
John C. Wharton.

Approved this 12th day of June, 1903.

By W. H. MUNGER, Judge.

Indorsed: Filed Jun 12 1903. Geo. H. Thummel, Clerk.

In the Circuit Court of the United States, in and for the
508 District of Nebraska.

Sumner Wallace, Complainant,
Doc. T. vs. No. 261.
American National Bank, et al., Defendants.

Bond on Appeal.

Know All Men By These Presents. That we, John N. Frenzer, principal, and Joseph P. Frenzer, surety, are held and firmly bound unto the Union National Bank of Omaha, Nebraska, in the full and just sum of $650.00 to be paid to the said Union National Bank of Omaha, Nebraska, its successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this Eighth day of June in the Year of our Lord One Thousand Nine Hundred and Three.

Whereas lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska in a suit pending in said court, wherein Sumner Wallace was plaintiff and the said Union National Bank of Omaha was one of the defendants, and said John N. Frenzer was one of the defendants, a decree was rendered against the said John N. Frenzer and the said John N. Frenzer has obtained an order of the said court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

Now, the condition of the above obligation is such,
509 that if the said John N. Frenzer shall prosecute said appeal to effect and answer and pay all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

JOHN N. FRENZER [Seal]
Sealed and delivered in JOSEPH P. FRENZER [Seal]
presence of John H. Voss.

Approved this 12th day of June 1903.
By W. H. MUNGER, Judge.

Indorsed: Filed Jun 12 1903. Geo. H. Thummel, Clerk.

510 In the Circuit Court of the United States in and for the District of Nebraska.

Sumner Wallace, Complainant,
No. 261. vs. Doc. T.
American National Bank, et al. Defendants.

Bond on Appeal.

Know All Men by These Presents:

That we John N. Frenzer principal, and Joseph P. Frenzer surety, are held and firmly bound unto Sumner Wallace in the full and just sum of $350.00 to be paid to the said Sumner Wallace, his heirs, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with [out] seals and dated this 8th day of June in the year of our Lord, One Thousand Nine Hundred and Three.

Whereas lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska in a suit pending in said Court, wherein Sumner Wallace was plaintiff and said John N. Frenzer was one of the defendants, a decree was rendered against the said John N. Frenzer and the said John N. Frenzer has obtained an order of the said Court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

Now, the Condition of the above obligation is such, that if the said John N. Frenzer shall prosecute said appeal
511 to effect and answer and pay all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

JOHN N. FRENZER. [Seal]
Sealed and delivered in JOSEPH P. FRENZER. [Seal]
presence of John H. Voss.

Approved this 12th day of June, 1900,
By W. H. MUNGER, Judge.

Indorsed: Filed Jun 12 1903. Geo. H. Thummel, Clerk.

512 In the Circuit Court of the United States, in and for the District of Nebraska.

Sumner Wallace, Complainant,
No. 261. vs. Doc. T.
American National Bank, et al. Defendants.

Bond on Appeal.

Know All Men by These Presents:

That we, Peter Frenzer principal, and Joseph P. Frenzer surety, are held and firmly bound unto the Union National Bank of Omaha, Nebraska, in the full and just sum of $1500.00 to be paid to the said Union National Bank of Omaha, Nebraska, its successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this Eighth day of June in the Year of our Lord One Thousand Nine Hundred and Three.

Whereas lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska in a suit pending in said court, wherein Sumner Wallace was plaintiff and the said Union National Bank of Omaha was one of the defendants, and said Peter Frenzer was one of the defendants, a decree was rendered against the said Peter Frenzer and the said Peter Frenzer has obtained an order of the said court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

513 Now, the condition of the above obligation is such, that if the said Peter Frenzer shall prosecute said appeal to the effect and answer and pay all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

PETER FRENZER [Seal]
Sealed and delivered in JOS. P. FRENZER [Seal]
presence of John H. Voss.

Approved this 12th day of June, 1903.

By W. H. MUNGER, Judge.

Indorsed: Filed Jun 12, 1903. Geo. T. Thummel, Clerk.

514 In the Circuit Court of the United States in and for the District of Nebraska.

Sumner Wallace, Complainant,
Doc. T. No. 261. vs.
American National Bank, et al., Defendants.

Bond on Appeal.

Know All Men By These Presents,

That we Peter Frenzer principal, and Joseph P. Frenzer, surety, are held and firmly bound unto Sumner Wallace in the full and just sum of $600.00 to be paid to the said Sumner Wallace, his heirs, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by th-se presents.

Sealed with [out] seals and dated this 8th day of June in the year of our Lord, One Thousand Nine Hundred and Three.

Whereas lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska in a suit pending in said Court, wherein Sumner Wallace was plaintiff and said Peter Frenzer was one of the defendants, a decree was rendered against the said Peter Frenzer and the said Peter Frenzer has obtained an order of the said Court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

Now, the Condition of the above obligation is such, that if the said Peter Frenzer shall prosecute said appeal to
515 effect and answer and pay all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

PETER FRENZER. [Seal]
Sealed and delivered in presence of JOS. P. FRENZER. [Seal]
John H. Voss.

Approved this 12th day of June, 1903.

By W. H. MUNGER, Judge.

Indorsed: Filed Jun. 12, 1903. Geo. H. Thummel, Clerk.

516 In the Circuit Court of the United States, in and for the District of Nebraska.

Sumner Wallace, Complainant,
Doc. T. No. 261. vs.
American National Bank, et al., Defendants.

Bond for Appeal.

Know All Men By These Presents:

That we, Charles C. George, principal, and United States Fidelity and Guaranty Company of Baltimore, surety, are held and firmly bound unto the Union National Bank, of Omaha, Nebraska, in the full and just sum of $1500.00 to be paid to the said Union National Bank of Omaha, Nebraska, its successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this 11th day of June in the year of our Lord, One Thousand Nine Hundred and Three.

Whereas lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska, in a suit pending in said court, wherein Sumner Wallace was plaintiff and the said Union National Bank of Omaha was one of the defendants, and said Charles C. George was one of the defendants, a decree was rendered against the said Charles C. George and the said Charles C. George has obtained an order of the said Court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

517 Now, the condition of the above obligation is such, that if the said Charles C. George shall prosecute said appeal to effect and answer and pay all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

CHARLES C. GEORGE.
THE UNITED STATES FIDELITY
AND GUARANTY COMPANY, [Seal]
Sealed and delivered in presence of Ross B. Towle. By B. L. Baldwin,
E. G. McGilton, [Seal]
[Seal] Its Attorneys in fact.

Approved this 12th day of June, 1903.

By W. H. MUNGER, Judge.

Indorsed: Filed Jun. 12, 1903. Geo. H. Thummel, Clerk.

518 In the Circuit Court of the United States, in and for the District of Nebraska.

Sumner Wallace, Complainant,
Doc. T. vs. No. 261.
American National Bank, et al., Defendants.

Bond for Appeal.

Know All Men By These Presents:

That we, Charles C. George, principal, and United States Fidelity and Guaranty Company of Baltimore, surety, are held and firmly bound unto Sumner Wallace in the full and just sum of $600.00 (Six Hundred Dollars) to be paid to the said Sumner Wallace, his heirs, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this 11th day of June in the year of our Lord, One Thousand Nine Hundred and Three.

Whereas lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska, in a suit pending in said court, wherein Sumner Wallace was plaintiff and the said Union National Bank of Omaha was one of the defendants, and said Charles C. George was one of the defendants, a decree was rendered against the said Charles C. George and the said Charles C. George has obtained an order of the said Court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

519 Now, the condition of the above obligation is such, that if the said Charles C. George shall prosecute said appeal to effect and answer and pay all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

CHARLES C. GEORGE,
THE UNITED STATES FIDELITY AND
GUARANTY COMPANY, [Seal]
By B. L. Baldwin,
E. G. McGilton, [Seal]
Its Attorneys in fact.

Sealed and delivered in presence of Ross B. Towle. [Seal]

Approved this 12th day of June, 1903.
By W. H. MUNGER, Judge.

Indorsed: Filed Jun. 12, 1903. Geo. H. Thummel, Clerk.

520 In the Circuit Court of the United States, in and for the District of Nebraska.

Sumner Wallace, Complainant,
Doc. T. vs. No. 261.
American National Bank, et al., Defendants.

Bond for Appeal.

Know All Men By These Presents,

That we, George G. Wallace principal, and E. R. Hume surety, are held and firmly bound unto Sumner Wallace and the Union National Bank of Omaha, Nebraska, in the full and just sum of $200.00 to be paid to the said Sumner Wallace, his heirs, executors, administrators or assigns and the Union National Bank of Omaha, Nebraska, its successors or assigns, to which payment well and truly to be made we bind ourselves our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this 11th day of June in the year of our Lord, One Thousand Nine Hundred and Three.

Whereas lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska, in a suit pending in said court, wherein Sumner Wallace was plaintiff and the said Union National Bank of Omaha was one of the defendants, and said George G. Wallace was one of the defendants a decree was rendered against the said George G. Wallace and the said George G. Wallace has obtained an order of the said court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

521 Now, the condition of the above obligation is such, that if the said George G. Wallace shall prosecute said appeal to effect and answer and pay all costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

GEORGE G. WALLACE, [Seal]
E. R. HUME [Seal]

Sealed and delivered in presence of
C. J. Edwards.

Approved this 12th day of June 1900.
By W. H. MUNGER, Judge.

Indorsed: Filed Jun. 12, 1903. Geo. H. Thummel, Clerk.

In the Circuit Court of the United States, in and for the
522 District of Nebraska.

Sumner Wallace, Complainant,
Doc. T.—No. 261. vs.
American National Bank, et al., Defendants.

Bond for Appeal.

Know all Men by These Presents, That we, Elmer C. Brownlee, principal, and Jacob Kopp surety, are held and firmly bound unto Sumner Wallace and the Union National Bank of Omaha, Nebraska, in the full and just sum of $200.00 to be paid to the said Sumner Wallace, his heirs, executors, administrators or assigns and the Union National Bank of Omaha, Nebraska, its successors or assigns, to which payment well and truly to be made we bind ourselves our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this 11th day of June in the year of our Lord, One Thousand Nine Hundred and Three.

Whereas lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska, in a suit pending in said court, wherein Sumner Wallace was plaintiff and the said Union National Bank of Omaha was one of the defendants, and said Elmer C. Brownlee, was one of the defendants a decree was rendered against the said Elmer C. Brownlee and the said Elmer C. Brownlee has obtained an order of the said court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

523 Now, the condition of the above obligation is such, that [iff] the said Elmer C. Brownlee shall prosecute said appeal to effect and answer and pay all costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

ELMER C. BROWNLEE [Seal]
JACOB KOPP. [Seal]

Sealed and delivered in
presence of Josephine Rosenbaum.

Approved this 12th day of June, 1903.
By W. H. MUNGER, Judge.

Indorsed: Filed Jun 12 1903. Geo. H. Thummel, Clerk.

In the Circuit Court of the United States, in and for the
524 District of Nebraska.

Sumner Wallace, Complainant,
Doc. T.—No. 261. vs.
American National Bank, et al., Defendants.

Bond for Appeal.

Know all Men by These Presents, That we, Albert U. Wyman principal, and Randall K. Brown, surety, are held and firmly bound unto Sumner Wallace and the Union National Bank of Omaha, Nebraska, in the full and just sum of $200.00 to be paid to the said Sumner Wallace, his heirs, executors, administrators or assigns and the Union National Bank of Omaha, Nebraska, its successors or assigns, to which payment well and truly to be made we bind ourselves our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this 11th day of June in the year of our Lord, One Thousand Nine Hundred and Three.

Whereas lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska, in a suit pending in said court, wherein Sumner Wallace was plaintiff and the said Union National Bank of Omaha was one of the defendants, and said Albert U. Wyman was one of the defendants a decree was rendered against the said Albert U. Wyman and the said Albert U. Wyman has obtained an order of the said court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

525 Now, the condition of the above obligation is such, that if the said Albert U. Wyman, shall prosecute said appeal to effect and answer and pay all costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

ALBERT U. WYMAN, [Seal]
Sealed and delivered in RANDALL K. BROWN, [Seal]
presence of T. F. Swift

Approved this 12th day of June, 1903.
By W. H. MUNGER, Judge.

Indorsed: Filed Jun 12 1903. Geo. H. Thummel, Clerk.

In the Circuit Court of the United States, in and for the
526 District of Nebraska.

Sumner Wallace, Complainant,
Doc. T.—No. 261. vs.
American National Bank, et al., Defendants.

Bond for Appeal.

Know all Men by These Presents, That we, Henry F. Wyman principal, and Randall K. Brown, surety, are held and firmly bound unto Sumner Wallace and the Union National Bank of Omaha, Nebraska, in the full and just sum of $200.00 to be paid to the said Sumner Wallace, his heirs, executors, administrators or assigns and the Union National Bank of Omaha, Nebraska, its successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this 11 day of June, in the year of our Lord, One Thousand Nine Hundred and Three.

Whereas, lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska, in a suit pending in said court, wherein Sumner Wallace was plaintiff and the said Union National Bank of Omaha was one of the defendants, and said Henry F. Wyman was one of the defendants a decree was rendered against the said Henry F. Wyman and the said Henry F. Wyman has obtained an order of the said Court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

527 Now, the condition of the above obligation is such, that if the said Henry F. Wyman shall prosecute said appeal to effect and answer and pay all costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

HENRY F. WYMAN [Seal]
Sealed and delivered RANDALL K. BROWN [Seal]
in presence of
T. F. Swift.

Approved this 12th day of June, 1903.

By W. H. MUNGER, Judge.

Indorsed: Filed Jun 12, 1903. Geo. H. Thummel, Clerk.

528 In the Circuit Court of the United States, in and for the District of Nebraska.

Sumner Wallace, Complainant,
No. 261. vs. Doc. T.
American National Bank, et al. Defendants.

Bond for Appeal.

Know All Men by These Presents,

That we, Howard B. Smith, principal, and Fidelity & Deposit Co. of Maryland surety, are held and firmly bound unto Sumner Wallace, and the Union National Bank of Omaha, Nebraska, in the full and just sum of $200.00 to be paid to the said Sumner Wallace, his heirs, executors, administrators or assigns and the Union National Bank of Omaha, Nebraska, its successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this 11 day of June in the year of our Lord, One Thousand Nine Hundred and Three.

Whereas lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska, in a suit pending in said court, wherein Sumner Wallace was plaintiff and the said Union National Bank of Omaha was one of the defendants, and said Howard B. Smith was one of the defendants a decree was rendered against the said Howard B. Smith and the said Howard B. Smith has obtained an order of the said Court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

529 Now, the condition of the above obligation is such, that if the said Howard B. Smith shall prosecute said appeal to effect and answer and pay all [all] costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

HOWARD B. SMITH [Seal]
FIDELITY & DEPOSIT CO.
OF MARYLAND [Seal]
[Seal] By A. Wagner, Agent and Attorney in fact.

Sealed and delivered in
presence of Harry L. Byrne.

Approved this 12th day of June 1903.
By W. H. MUNGER, Judge.

Indorsed: Filed Jun 12, 1903. Geo. H. Thummel, Clerk.

530 Thereupon afterwards, to-wit: On the said 12th day of June, 1903, Justifications of Surety for the defendants, Wallace, Peter & John N. Frenzer, Morris Levy, Albery U. & Henry F. Wyman and Elmer C. Brownlee, which said Justifications are in words and figures following, to-wit:

In the U. S. Circuit Court District of Nebraska.

Sumner Wallace, Plaintiff,
No. 261. vs. Doc. T.
American National Bank, et al., Defendants

State of Nebraska,
Douglas County—ss.

E. R. Hume being duly sworn, says that he is a proposed surety for George G. Wallace in the above entitled action, and that he is a resident and freeholder of said County; that he has a freehold Estate in land situate in said County, of the value of $2000.00 over and above all liens and incumbrances thereon, and exclusive of any homestead or other land exempt from exe-ution; and that he is worth in personal property situate in said County, the sum of $..... over and above all his debts, liabilities and responsibilities, and exclusive of personal property exempt from execution; and that he is worth in other real and personal property situate in said State, the sum of $..... over and above all liens and incumbrances thereon, and beyond all his debts and liabilities, and exclusive of property exempt from execution.

E. R. HUME.

Sworn to before me and signed in my presence this 11th day of June, A. D. 1903.

FRANK L. McCOY,
[Seal] Notary Public.

My commission expires Jany. 22 1905.

Indorsed: Filed Jun 12, 1903. Geo. H. Thummel, Clerk.

531 In the U. S. Circuit CourtDistrict of Nebraska.

Sumner Wallace, Plaintiff,
Doc. T. No. 261. vs.
American National Bank, et al., Defendants.

State of Nebraska,
Douglas County—ss.

Jos. P. Frenzer being duly sworn, says that he is a proposed surety for Peter Frenzer and John N. Frenzer in the above entitled action, and that he is a resident and freeholder of said

County; that he has a freehold Estate in land situate in said County, of the value of $400.00 over and above all liens and incumbrances thereon, and exclusive of any homestead or other land exempt from execution; and that he is worth in personal property situate in said County, the sum of $20,000.00 over and above all his debts, liabilities and responsibilities, and exclusive of personal property exempt from execution; and that he is worth in other real and personal property situate in said State, the sum of $..... over and above all liens and incumbrances thereon, and beyond all his debts and liabilities, and exclusive of property exempt from execution.

JOS. P. FRENZER.

Sworn to before me and signed in my presence this 8th day of June, A. D. 1903.

[Seal] C. H. RIEPEN,
Notary Public.

Indorsed: Filed Jun. 12, 1903. Geo. H. Thummel, Clerk.

532 In the U. S. Circuit Court District of Nebraska.

Sumner Wallace, Plaintiff,
Doc. T. No. 261. vs.
American National Bank, et al., Defendants.

State of Nebraska,
County of Douglas—ss.

Herman Cohn, being duly sworn, says that he is a proposed surety for Morris Levy in the above entitled action, and that he is a resident and freeholder of said County; that he has a freehold Estate in land situate in said County, of the value of $12000.00 over and above all liens and incumbrances thereon, and exclusive of any homestead or other land exempt from execution; and that he is worth in personal property situate in said County, the sum of $12,000.00 over and above all his debts, liabilities and responsibilities, and exclusive of personal property exempt from execution; and that he is worth in other real and personal property situate in said State, the sum of $12000.00 over and above all liens and incumbrances thereon, and beyond all his debts and liabilities, and exclusive of property exempt from execution.

HERMAN COHN.

Sworn to before me and signed in my presence this 9th day of June, A. D. 1903.

[Seal] JOHN C. WHARTON,
Notary Public.

Indorsed: Filed Jun. 12, 1903. Geo. H. Thummel, Clerk.

533 In the U. S. Circuit Court District of Nebraska.

Sumner Wallace, Plaintiff,
Doc. T. No. 261. vs.
American National Bank, et al., Defendants.

State of Nebraska,
County of Douglas—ss.

Randall K. Brown, being duly sworn, says that he is a proposed surety for Albert U. Wyman & Henry F. Wyman in the above entitled action, and that he is a resident and freeholder of said County; that he has a freehold Estate in land situate in said County, of the value of $800.00 over and above all liens and incumbrances thereon, and exclusive of any homestead or other land exempt from execution; and that he is worth in personal property situate in said County, the sum of $800.00 over and above all his debts, liabilities and responsibilities, and exclusive of personal property exempt from execution; and that he is worth in other real and personal property situate in said State, the sum of $800.00 over and above all liens and incumbrances thereon, and beyond all his debts and liabilities and exclusive of property exempt from execution.

RANDALL K. BROWN.

Sworn to before me, and signed in my presence this 11th day of June, A. D. 1903.

[Seal] JOHN D. WEAR,
Notary Public.

Indorsed: Filed Jun. 12, 1903. Geo. H. Thummel, Clerk.

534 In the U. S. Circuit Court District of Nebraska.

Sumner Wallace, Plaintiff,
Doc. T. No. 261. vs.
American National Bank, et al., Defendants.

State of Nebraska,
County of Douglas—ss.

Jacob Kopp being duly sworn, says that he is a proposed surety for Elmer C. Brownlee in the above entitled action, and that he is a resident and freeholder of said County; that he has a freehold Estate in land situate in said County, of the value of $1000.00 over and above all liens and incumbrances thereon, and exclusive of any homestead or other land exempt from execution; and that he is worth in personal property situate in said County, the sum of $1000.00 over and above all his debts, liabilities and responsibilities, and exclusive of personal property exempt from execution; and that he is worth in other real and

personal property situate in said State, the sum of $1000.00 over and above all liens and incumbrances thereon, and beyond all his debts and liabilities and exclusive of property exempt from execution.

JACOB KOPP.

Sworn to before me, and signed in my presence this 11th day of June, A. D. 1903.

[Seal] CHARLES L. DEUEL,
Notary Public.

Indorsed: Filed Jun. 12, 1903. Geo. H. Thummel, Clerk.

535 Thereupon afterwards, to-wit: On the 1st day of July, 1903, Precipe for Transcript on Appeal was filed in said case by Howard B. Smith, which said Precipe is in words and figures following, to-wit:

In the Circuit Court of the United States, in and for the District of Nebraska.

Sumner Wallace, Complainant,
No. 261. vs. Doc. T.
The American National Bank, et al., [Complainant].

Precipe.

To the Clerk of said Court:

Please make a transcript of the following parts of the record in the above entitled case for appeal to the United States Court of Appeals, to-wit:

1. The Bill of Complaint filed August 18, 1898.
2. Memorandum Opinion of Judge Munger filed Sept. 29, 1899.
3. Motion to appoint James Burness, Trustee, filed Dec. 5, 1899.
4. The order appointing James Burness, Trustee, entered January 8, 1900.
5. The order granting leave to file amended bill, entered Feb. 7, 1900.
6. The Amended Bill filed Feb. 17th, 1900, and refiled Jan. 8, 1901.
7. The order granting leave to re-file amended bill, etc., entered Jan. 8, 1901.
8. The Joint and several answer of Elmer C. Brownlee, Peter Frenzer, John N. Frenzer and Howard B. Smith, filed Feb. 4, 1901.

536 9. The Joint and several answer of Charles C. George, Henry F. Wyman, Albert U. Wyman and Morris Levy, filed Feb. 4, 1901.

10. The Answer to the Union National Bank filed Aug. 2, 1901.

11. The Replication to the answers of all the defendants, filed Aug. 2, 1901.

12. All the evidence and depositions.

13. The stipulation that the answer of Brownlee et al., would serve as the answer of George G. Wallace also, filed July 1, 1902.

14. The Journal Entry of July 1, 1902, showing case heard on proofs and submitted.

15. Memorandum of Opinion of Judge Munger filed Sept. 1, 1902.

16. Order confirming sale by James Burness, Trustee, entered Dec. 9, 1902.

17. The order confirming the Final Report of James Burness, Trustee, entered Jan. 3, 1903.

18. The Memorandum of Opinion of Judge Munger filed April 24, 1903.

19. The Decree entered May 23, 1903.

20. The petition for appeal, and the assignment of errors filed May 23, 1903, by Elmer C. Brownlee, et al.

21. The order allowing the appeal of Elmer C. Brownlee, et al., entered May 23, 1903.

22. The several bonds filed by Elmer C. Brownlee, George C. Wallace, Charles C. George, Peter Frenzer, Howard B. Smith, Henry F. Wyman, Albert U. Wyman, Morris Levy and John Frenzer.

23. This Precipe and Notice.

HOWARD B. SMITH,

Solicitor for Elmer C. Brownlee, George G. Wallace, Charles C. George, Peter Frenzer, Howard B. Smith, John N. Frenzer, Henry F. Wyman, Albert U. Wyman and Morris Levy, Defendants.

To Sumner Wallace, complainant, and the Union National Bank of Omaha, Defendant:

Please Take Notice that Elmer C. Brownlee, George
537 G. Wallace, Charles C. George, Peter Frenzer, John N. Frenzer, Howard B. Smith, Henry F. Wyman, Albert U. Wyman and Morris Levy, defendants in the above entitled cause, deem the parts of the record specified in the foregoing precipe all that is necessary for the hearing of their and each of their appeal in the United States Circuit Court of Appeals for the Eighth Circuit.

HOWARD B. SMITH,
Solicitor for said defendants.

Received a copy of the foregoing Precipe and notice this 12th day of June, 1903.

J. H. MACOMBER,
HALL & McCULLOCH,
Solicitors and of counsel for said Sumner Wallace, and said Union National Bank, of Omaha.

Indorsed: Filed Jul. 1, 1903. Geo. H. Thummel, Clerk.

538 Thereupon afterwards, to-wit: On the 23rd day of May, 1903, a Petition for Appeal and Assignment of Errors was filed in said case, which said Petition is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

Sumner Wallace,
No. 261. vs. Doc. T.
American National Bank, et al.

Petition for Appeal and Assignment of Errors.

To the Court:

William S. Poppleton, one of the defendants in the above entitled cause, shows that the final decree herein adjudges him to pay to the complainant the sum of $1308.37 and to pay the Union National Bank the sum of $4160.81; that said final decree is prejudicial and erroneous as follows, to-wit:

Assignment of Errors.

(1) The Circuit Court erred in rendering the decree against this defendant because said Court has not jurisdiction of said cause, that is to say: the complainant, sues as the assignee of a chose in action, to-wit: a non-negotiable promissory note executed by the American National Bank of Omaha as maker and in favor of Union National Bank of Omaha as payee each of whom was at the time of the execution and delivery of said note and at the time of the filing of the original and amended bills a citizen and resident of the State of Nebraska.

(2) The Circuit Court erred in rendering the decree against this defendant because said court had not jurisdiction of
539 said cause, that is to say; the said American National Bank had not gone into voluntary liquidation pursuant to section 5220 of the Revised Statutes of the United States at any time prior to the rendition of said decree.

(3) The Circuit Court erred in rendering said decree against this defendant because said court had not jurisdiction of the cause that is to say: the complainant had not reduced his claim to judgment against the American National Bank and exhausted his remedy at law.

(4) The Circuit Court erred in rendering said decree against this defendant and in adjudging this defendant to pay to the complainant Sumner Wallace the sum of $1308.37 because the agreement between the American National Bank and the Union National Bank, dated Dec. 21, 1893, a copy of which is attached to the Amended Bill of Complainant as Exhibit "A" and the alleged promissory note set out in the said bill are ultra vires and void and create no liability for which shareholders are responsible.

(5) The Circuit Court erred in rendering the said decree against this defendant and in adjudging this defendant to pay the said complainant the sum of $1308.37 because the obligation of the American National Bank sued on is not an obligation incurred, contracted or assumed in the course of the business of banking.

(6) The Circuit Court erred in rendering said decree against this defendant and in adjudging this defendant to pay the sum of $4160.81 to the Union National Bank, because the Agreement between the American National Bank and the Union National Bank dated Dec. 21, 1895, a copy of which is attached to the Amended Bill of Complaint and the alleged promissory
540 notes set out in the answer or claim of the Union National Bank are ultra vires and void and create no liability for which shareholders are responsible.

(7) The Circuit Court erred in rendering said decree and in adjudging this defendant to pay to the Union National Bank the sum of $4160.81 because the claim of the said Union National Bank is founded upon an alleged obligation of the American National Bank which was not incurred, assumed or contracted in the business of banking.

(8) The Circuit Court erred in rendering the said decree and in adjudging this defendant to pay to the Union National Bank the sum of $4160.81 because said court had not jurisdiction of this defendant as to said claim.

(9) The Circuit Court erred in not rendering a decree for this defendant.

Wherefore this defendant prays that an appeal be allowed with supersedeas and for a citation.

WILLIAM S. POPPLETON,
By Richard S. Horton, Solicitor.

Indorsed: Filed May 23, 1903. Geo. H. Thummel, Clerk.

541 Thereupon afterwards, to-wit: On the 25th day of May, 1903, the Bond of William S. Poppleton in favor of Sumner Wallace was filed in said case, which said Bond is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

Sumner Wallace,
v.
American National Bank, et al.

Bond.

Know All Men By These Presents, that we, William S. Poppleton as principal and American Surety Company of New York, as surety, are jointly and severally held and firmly bound unto Sumner Wallace, his heirs, executors and administrators, in the penal sum of $1500.00 in lawful money of the United States well and truly to be paid.

The condition of the foregoing obligation is such that Whereas the above bounden William S. Poppleton has appealed from the decree and judgment of the Circuit Court of the United States for the District of Nebraska in a certain cause therein pending wherein Sumner Wallace is complainant and William S. Poppleton is a defendant, and

Whereas, judgment was rendered against said William S. Poppleton, for the sum of $1308.37 in favor of Sumner Wallace;

Now therefore if the said William S. Poppleton, appellant in said cause, shall prosecute his said appeal to effect and answer and pay all damages and costs if he fail to make good his plea, then this obligation to be null and void, but otherwise in full force and virtue.

542 Witness our hands this 23 day of May, 1903.

WILLIAM S. POPPLETON,
AMERICAN SURETY COMPANY
OF NEW YORK,
By H. W. Yates, Resident Vice-Prest.
[Seal] Attest: Philip Potter, Resident Asst. Sec'y.

Bond & surety approved.
W. H. MUNGER, Judge.

Indorsed: Filed May 25, 1903. Geo. H. Thummel, Clerk.

543 Thereupon afterwards, to-wit: On the 25th day of May, 1903 the Bond of William S. Poppleton in favor of Union National Bank was filed in said case, which said Bond is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

Sumner Wallace,
v.
American National Bank, et al.

Bond.

Know All Men by These Presents that we, William S. Poppleton, as principal and American Surety Company of New York, as surety, are jointly and severally held and firmly bound unto the Union National Bank, its successors and assigns, in the penal sum of $4500.00 in lawful money of the United States, well and truly to be paid.

The condition of the foregoing obligation is such that

Whereas the above bounden William S. Poppleton has appealed from the decree and judgment of the Circuit Court of the United States for the District of Nebraska in a certain cause therein pending wherein Sumner Wallace is complainant and William S. Poppleton is a defendant, and

Whereas judgment was rendered against said William S. Poppleton for the sum of $4160.81 in favor of the Union National Bank;

Now therefore if the said William S. Poppleton, appellant in said cause, shall prosecute his said appeal to effect and answer and pay all damages and costs if he fail to make good his plea, then this obligation to be null and void, but otherwise to remain in full force and virtue.

544 Witness our hands this 23 day of May, A. D. 1903.

WILLIAM S. POPPLETON.
[Seal] AMERICAN SURETY COMPANY OF NEW YORK.
By H. W. Yates, Resident Vice-Prest.
Attest: Philip Potter, Resident Asst. Secy.

Bond and surety approved.

W. H. MUNGER.

Indorsed: Filed May 25 1903. Geo. H. Thummel, Clerk.

Thereupon afterwards, to-wit: On the 1st day of July,
545 1903 a Praecipe for Transcript on Appeal of William S. Poppleton was filed in said case, which said Praecipe is in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Nebraska.

Sumner Wallace,
Doc. T.—No. 261. vs.
American National Bank, et al.

Praecipe for Transcript on Appeal of William S. Poppleton.

To the Clerk of said Court:—

Please make a transcript of the following parts of the record in the above entitled cause for appeal to the United States Circuit Court of Appeals, to-wit:

(1) The original bill, filed August 18, 1898.

(2) The memorandum of opinion of Judge Munger filed Sep. 29, 1899.

(3) The motion to appoint James Burness trustee, filed Dec. 5, 1899.

(4) The order appointing James Burness trustee, entered Jan. 8, 1900.

(5) Order granting leave to complainant to file amended bill of complaint, entered February 7, 1900.

(6) The amended bill of complaint, endorsed Filed Feby. 17, 1900, also endorsed, Re-filed Jany 8, 1901.

(7) Order granting leave to refile amended bill of complaint entered Jany. 8, 1901.

(8) The separate answer of William S. Poppleton to the amended bill of complaint filed Feby 12, 1901.

(9) The answer of Union National Bank to the amended bill of complaint, filed August 2, 1901.

(10) The general replication to the answers of all defendants, filed August 2nd, 1901.

546 (11) All of the evidence and depositions.

(12) Record entry July 1st, 1902, showing the case heard on proofs and submitted.

(13) The memorandum of opinion of Judge Munger filed Sep. 1, 1902.

(14) The order confirming sale of assets entered Dec. 9, 1902.

(15) The order confirming final report of Burness as trustee, entered Jan. 3, 1903.

(16) Memorandum opinion of Judge Munger, filed April 24th, 1903.

(17) The final decree entered May 23rd, 1903.

(18) The petition for appeal and assignment of errors of William S. Poppleton, filed May 23rd, 1903.

(19) The supersedeas bond of William S. Poppleton in favor of Sumner Wallace filed May 23rd, 1903.

(20) The supersedeas bond of William S. Poppleton in favor of Union National Bank filed May 23rd, 1903.

(21) This praecipe and notice.

RICHARD S. HORTON,
Attorney for William S. Poppleton.

Indorsed: Filed Jul 1 1903. Geo. H. Thummel, Clerk.

547 Thereupon afterwards, to-wit: On the 4th day of June, 1903 an Assignment of Errors was filed in said case, which said Assignment of Errors is in words and figures following, to-wit:

In the Circuit Court of the United States in and for the District of Nebraska.

Sumner Wallace, Complainant,
Doc. T—No. 261. vs. In Equity.

American National Bank, a corporation, The McCague Investment Company, a corporation, Thomas H. McCague, Alex G. Charlton, Elmer C. Brownlee, Elizabeth Dufrene, Executrix of the last Will and Testament of Alfred R. Dufrene, Deceased, Edgar M. Morsman, Philip Mergin, George G. Wallace, William S. Poppleton, John S. King, William Wallace, Charles F. Manderson, Anna C. Crowell, Charles C. George, Robert H. McClellan, Peter Frenzer, John N. Frenzer, Charles H. Walworth, Frank W. Wessels, Frank Graham, James H. McCulloch, John P. Charlton, C. W. Morton, Royal Wilsen, Jacob Wead, James J. Brown, Jr., James J. Woodward, Viola Coffin, Howard B. Smith, Edward G. Glenn, Emily J. Robinson, James H. Morton, George Morton, Mary E. Morton, William Wilson, Henry F. Wyman, Albert U. Wyman, F. R. McConnell, Trustee, John Speer, John E. Patrick, R. L. Brownlee, Caroline Carpenter, William C. Beer, Marcus C. Acheson, George Marples, Arthur H. Flack, Meade C. Williams, James H. Conrad, T. R. Neal, J. H. Hawkins, William Baird, The Manufacturers' National Bank, of Boston, Mass., a corporation, John L. McCague, Morris Levy, National Bank Building Company of America, a corporation, John L. McCague, Thomas H. McCague, William L. McCague and Alex. G. Charlton, partners doing business under the firm name and style of McCague Bros., Rufus B. Bullock, Thomas L. Kimball,

Thomas L. Kimball, Trustee, Alex. G. Charlton, Secretary, Samuel Blackwell, and the Union National Bank of Omaha, Nebraska, Defendants.

Assignment of Errors.

548 And now on this 4th day of June, 1903, Charles W. Morton, James H. Morton, George Morton and Mary E. Morton, defendants in the above entitled action, come, and each of them comes, by their solicitor and say, and each of them says, that the decree in said cause is erroneous and against the just rights of these defendants and each of them for the following reasons, to-wit:

1. That said Circuit Court did not have jurisdiction over these defendants or either of them, because the complainant sued as the assignee of a chose in action, to-wit: (a non-negotiable promissory note) given by said American National Bank of Omaha, Nebraska, to said Union National Bank of Omaha, Nebraska, and each of these defendants is a citizen and resident of Nebraska.

2. That said Circuit Court did not have jurisdiction of said cause, or of these defendants, or either of them, under the Act of Congress of June 30, 1876 (Supp. U. S. Rev. Stats. 107), because said American National Bank of Omaha had not gone into voluntary liquidation within the meaning of Sec. 5220 of the U. S. Revised Statutes or of any other of the banking laws of the United States; for the reason that said bank has no assets in its possession or under its control at the time certain of the shareholders of said bank voted to go into voluntary liquidation.

3. That said Circuit Court did not have jurisdiction of said cause or of these defendants or either of them, under said Act of Congress of June 30, 1876, even if said American National Bank of Omaha had gone into voluntary liquidation, because said Amended Bill does not allege that complainant or his assignor ever "presented his notes or other claims against the Association for Payment" as provided in Section 5221 of the U. S. Revised Statutes.

549 4. That said Circuit Court did not have jurisdiction of said cause or of these defendants, or either of them, under the Act of Congress of June 30, 1876 (Supp. U. S. Rev. Stats. 107) because the complainant had not obtained judgment at law upon the note held by him and had not caused an execution to be issued thereon and returned nulla bona, and, therefore, did not and could not file in said court a bill in equity in the nature of a creditor's [vill], as provided in said act.

5. Because the court finds and the decree adjudges that there is due from the American National Bank and the stockholders thereof to Sumner Wallace, complainant, upon the contract set out in the amended bill and the first of said notes, also set out in said amended bill, the sum of $46,524.83.

6. Because the court finds and the decree adjudges that there is due to said Union National Bank from said American National Bank and the stockholders thereof the sum of $147,941.52.

7. Because the court finds and the decree adjudges that each of these defendants is liable to the said Sumner Wallace and to the said Union National Bank in the sum set opposite his name, as follows:

From Charles W. Morton to the complainant, Sumner Wallace, the sum of	$139.56	
From Charles W. Morton to the said Union National Bank, the sum of		$443.82
From James H. Mortron to the complainant Sumner Wallace, the sum of	$ 46.52	
From James H. Morton to the said Union National Bank, the sum of		$147.94
From George Morton to the complainant, Sumner Wallace, the sum of	$ 23.26	
From George Morton to the said Union National Bank, the sum of		$ 73.97
350 From Mary E. Morton to the complainant, Sumner Wallace, the sum of	$ 23.26	
From Mary E. Morton to the said Union National Bank, the sum of		$ 73.97

8. Because the decree adjudges that the complainant, Sumner Wallace, have and recover of each of these defendants the sum set opposite his name, to-wit:

From Charles W. Morton the sum of	$ 139.56
From James H. Morton the sum of	" 46.52
From George Morton the sum of	" 23.26
From Mary E. Morton the sum of	" 23.26

9. Because the decree adjudges that the Union National Bank have and recover of each of these defendants the sum set opposite his name, to-wit:

From Charles W. Morton the sum of	$443.82
From James H. Morton the sum of	147.94
From George Morton the sum of	73.97
From Mary E. Morton the sum of	73.97

10. [Beacuse] the decree adjudges that the said Sumner Wallace and said Union National Bank have judgment against each of these defendants for the costs taxed at $..... against each of them.

11. Because the decree adjudges that execution be issued against each of these defendants.

12. Because the decree did not adjudge that each of these defendants was not liable to the complainant, Sumner Wallace, in any sum whatever.

13. Because the decree did not adjudge that each of these defendants was not liable to said Union National Bank of Omaha in any sum whatever.

14. Because the decree did not adjudge that each and all of these defendants, shareholders of the American Na-
551 tional Bank of Omaha, was and were not liable in said action to said Union National Bank of Omaha, for the reason that said Union National Bank did not file a cross bill in said action or otherwise plead therein, except by an answer to the amended bill of complaint.

15. Because the decree did not adjudge that said American National Bank of Omaha was not indebted to said Union National Bank of Omaha before or at the time of the execution and delivery of the three notes in said amended bill described.

16. Because the decree did not adjudge that the execution and delivery of the contract or agreement set forth in the amended bill was ultra vires said American National Bank of Omaha.

17. Because the decree did not adjudge that the borrowing of money ($201,000.00) alleged in the amended bill from said Union National Bank by said American National Bank was ultra vires said American National Bank.

18. Because the decree did not adjudge that the execution and delivery of each of the three non-negotiable notes, due one, two and three years after date and drawing interest at 6% per annum from date, described in the amended bill, was ultra vires said American National Bank of Omaha.

19. Because the decree did not adjudge that the execution and delivery of the agreement and the giving of the notes mentioned in the amended bill were not within the powers incidental to the carrying on of the business of banking for which said American National Bank was established.

20. Because the decree did not adjudge that said American National Bank did not have power under Sec. 5136 of the Revised

Statutes of the United States to enter into said contract or
552 to execute and deliver said notes.

21. Because the decree did not adjudge that said transaction to-wit: the execution of said agreement and the giving of said notes, was prohibited by the public policy of the United States as shown by the provisions of the Revised Statutes controlling the voluntary liquidation, involuntary liquidation and consolidation of National Banks.

22. Because the decree did not adjudge that said transaction was prohibited by Sections 5145 and 5147 of the U. S. Revised Statutes.

23. Because the decree did not adjudge that said transaction was prohibited by Section 5202 of the U. S. Revised Statutes.

24. Because the decree did not adjudge that the transactions between said American National Bank of Omaha and said Union National Bank of Omaha set forth in the amended bill were not in the usual course of the banking business of said American National Bank, and that, for that reason, these defendants, shareholders of said American National Bank, were, and each of them was, not liable for any deficit that might remain after the application of the assets of said bank to the payment of the three notes set forth in said amended bill.

25. Because the decree did not adjudge that the contract, debts and engagements set forth in said amended bill were not duly contracted or entered into in the ordinary course of the business of said American National Bank of Omaha, and that, by reason thereof, the shareholders of said bank, to-wit:—these defendants and each of them, were not liable to said complainant
nor to said Union National Bank of Omaha, for the
553 following among other reasons, to-wit:

(1) Because the transactions set forth in the amended bill was not a borrowing of money by said American National Bank of said Union National Bank within the meaning of or within the powers conferred by the banking laws of the United States.

(2) Because the said American National Bank sold and assigned its business, its cash on hand, its office furniture, its fixtures, and certain of its bills receivable to said Union National Bank.

(3) Because the agreement set forth in said amended bill provided that said Union National Bank should liquidate the assets of said American National Bank.

(4) Because in said agreement said American National Bank agreed to sustain and pay one-half the loss and expense which said Union National Bank might sustain on account of its removal from its present quarters by reason of its unpaid lease of its present place of business and one-half of the loss which it might sustain on the sale of its office furniture and fixtures.

(5) Because in said agreement said American National Bank guaranteed said Union National Bank against any and all loss on account of assuming its liabilities.

(6) Because in said agreement said American National Bank sold and assigned all of its remaining assets to said Union National Bank.

(7) Because the amount of the three notes mentioned in said amended bill was not determined and said notes were not signed until after said American National Bank had sold and assigned all its assets to said Union National Bank.

554 (8) Because said American National Bank was compelled to and did cease to do business as a bank.

(9) Because said American National Bank surrendered all control over its assets.

(10) Because its directors ceased to exercise any direction or control over its affairs or assets.

(11) Because said American National Bank entrusted to said Union National Bank all its assets to be sold, collected or compromised at the discretion of said Union National Bank.

(12) Because said American National Bank guaranteed that such assets should continue to be sufficient to meet the payment of the three notes set out in said amended bill.

(13) Because said American National Bank executed and delivered the three non-negotiable promissory notes mentioned in said amended bill.

(14) Because said American National Bank agreed to pay interest at 6% per annum on $291,000.00 from and after Dec. 23, 1895.

(15) Because said American National Bank and the defendants, shareholders thereof, still remain liable for any valid indebtedness existing against said American National Bank at the time its assets were turned over to said Union National Bank.

Wherefore, these defendants pray and each of them prays that said decree be reversed and that said court may be directed to enter a decree dismissing said defendants and each of them with his costs.

Dated June 4th, 1903.

555 CHARLES W. MORTON,
JAMES H. MORTON,
GEORGE MORTON and
MARY E. MORTON,
By W. H. DeFrance,
Their Solicitor.

Indorsed: Filed Jun 4 1903. Geo. H. Thummel, Clerk.

Thereupon afterwards, to-wit: On the 4th day of
556 June, 1903 a Petition for Appeal was filed in said case, which said Petition is in words and figures following, to-wit:

In the Circuit Court of the United States in and for the District of Nebraska.

Summer Wallace, Complainant,
Dsc. T. No. 261. vs. In Equity.
American National Bank, a corporation, The McCague Investment Company, a corporation, Thomas H. McCague, Alex. G. Charlton, Elmer C. Brownlee, Elizabeth Dufrene, Executrix of the last Will and Testament of Alfred R. Dufrene, Deceased, Edgar M. Morsman, Philip Mergin, George G. Wallace, William S. Poppleton, John S. King, William Wallace, Charles F. Manderson, Anna C. Crowell, Charles C. George, Robert H. McClellan, Peter Frenzer, John N. Frenzer, Charles H. Walworth, Frank W. Wessels, Frank Graham, James H. McCulloch, John P. Charlton, C. W. Morton, Royal Wilson, Jacob Wead, James J. Brown, Jr., James J. Woodward, Viola Coffin, Howard B. Smith, Edward G. Glenn, Emily J. Robinson, James H. Morton, George Morton, Mary E. Morton, William Wilson, Henry F. Wyman, Albert U. Wyman, F. R. McConnell, Trustee, John Speer, John E. Patrick, R. L. Brownlee, Caroline Carpenter, William C. Beer, Marcus C. Acheson, George Marples, Arthur H. Flack, Meade C. Williams, James H. Conrad, T. R. Neal, J. H. Hawkins, William Baird, The Manufacturers' National Bank of Boston, Mass., a corporation, John L. McCague, Morris Levy, National Bank Building Company of America, a corporation John L. McCague, Thomas H. McCague, William L. McCague and Alex. G. Charlton, part-

ners doing business under the firm name and style of McCague Bros., Rufus B. Bullock, Thomas L. Kimball, Thomas L. Kimball, Trustee, Alex. G. Charlton, Secretary, Samuel Blackwell, and the Union National Bank of Omaha, Nebraska, Defendants

Petition for Appeal.

557 Now come Charles W. Morton, James H. Morton, George Morton and Mary E. Morton, defendants in the above entitled action and now comes each of said defendants, and conceiving themselves and each conceiving himself aggrieved by the decree made and entered in the above entitled cause on the 23rd day of May, 1903, do, and each of them does, hereby appeal from said decree to the United States Circuit Court of Appeals for the Eighth Circuit for the reasons specified in the Assignment of Errors filed herewith, and pray, and each of them prays, that this appeal may be allowed and that a transcript of the records, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

Dated June 4th, 1903.

CHARLES W. MORTON,
JAMES H. MORTON,
GEORGE MORTON and
MARY E. MORTON,
By W. H. DeFrance,
Their Solicitor.

Indorsed: Filed Jun 4, 1903. Geo. H. Thummel, Clerk.

Thereupon afterwards, to-wit: On the 4th day of
558 June, 1903, an Order Allowing Appeal was filed in said case, which said Order is in words and figures following, to-wit:

In the Circuit Court of the United States in and for the District of Nebraska.

Sumner Wallace, Complainant,
Doc. T. No. 261. vs. In Equity.
American National Bank, a corporation, The McCague Investment Company, a corporation, Thomas H. McCague, Alex. G. Charlton, Elmer C. Brownlee, Elizabeth Dufrene, Executrix of the last Will and Testament of Alfred R. Dufrene, Deceased, Edgar M. Morsman, Philip Mergin, George G. Wallace, William S. Poppleton, John S. King, William Wallace, Charles F. Manderson, Anna C. Crowell, Charles C. George, Robert H. McClellan, Peter

Frenzer, John N. Frenzer, Charles H. Walworth, Frank W. Wessels, Frank Graham, James H. McCulloch, John P. Charlton, C. W. Morton, Royal Wilson, Jacob Wead, James J. Brown, Jr., James J. Woodward, Viola Coffin, Howard B. Smith, Edward G. Glenn, Emily J. Robinson, James H. Morton, George Morton, Mary E. Morton, William Wilson, Henry F. Wyman, Albert U. Wyman, F. R. McConnell, Trustee, John Speer, John E. Patrick, R. L. Brownlee, Caroline Carpenter, William C. Beer, Marcus C. Acheson, George Marples, Arthur H. Flack, Meade C. Williams, James B. Conrad, T. R. Neal, J. H. Hawkins, William Baird, The Manufacturers' National Bank of Boston, Mass., a corporation, John L. McCague, Morris Levy, National Bank Building Company of America, a corporation, John L. McCague, Thomas H. McCague, William L. McCague and Alex. G. Charlton, partners doing business under the firm name and style of McCague Bros., Rufus B. Bullock, Thomas L. Kimball, Thomas L. Kimball, Trustee, Alex. G. Charlton, Secretary, Samuel Blackwell, and the Union National Bank of Omaha, Nebraska, Defendants

Order Allowing Appeal.

559 On motion of the solicitor for each of the following named defendants in the above entitled action, to-wit: Charles W. Morton, James H. Morton, George Morton and Mary E. Morton,

It is Ordered in open court that an appeal to the United States Circuit Court of Appeals for the Eighth Circuit from the final decree heretofore filed and entered herein be, and the same is allowed, and that a certified transcript of the record, testimony, papers, and proceedings herein be forthwith transmitted to said United States Circuit Court of Appeals.

It is Further Ordered that the bond on appeal for each of the defendants above named who may desire to supersede said decree shall be fixed at a sum which shall at least equal the amount adjudged against such defendant and interest thereon for a period of one and one-half years and costs taxed against him and that, upon the approval of such bond, said decree shall be superseded as to such defendants.

It is Further Ordered that the bond on appeal for such of the defendants as do not desire to supersede said decree be fixed at the sum of $200.00, which shall be for costs only and shall, when approved, not operate as a supersedeas bond.

It is further Ordered that any or all of the defendants whose bonds shall be approved, may join in such appeal without prejudice to any special or peculiar rights or defenses they or any of them may have and that one record only be transmitted to said United States Circuit Court of Appeals, which record shall be equally available to each and all of such defendants.

Dated June 4th, 1903.

W. H. MUNGER, Judge.

Indorsed: Filed Jun 4, 1903. Geo. H. Thummel, Clerk.

560 Thereupon afterwards, to-wit:—On the 9th day of June, 1903, a Power of Attorney was filed in said case, which said Power of Attorney is in words and figures following, to-wit:—

Power of Attorney.

Know All Men by These Presents, That I, George Morton of Riverside, Cook County, Illinois, have made, constituted and appointed and by these Presents do make, constitute and appoint Charles W. Morton of Douglas County, Nebraska, my true and lawful Attorney for me and in my name, place and stead, to execute any and all papers or documents including bond, necessary in order to appeal from the decree to be rendered and entered in a certain cause pending in the Circuit Court of the United States for the District of Nebraska wherein Sumner Wallace is Complainant and American National Bank, Charles W. Morton, George Morton and others are Respondents, which said cause is known as Number 261, Docket T, of the records of said Court, giving and granting unto him, my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and conforming all that my said Attorney or his substitute shall lawfully do or cause to be done by virtue thereof.

In Witness Whereof I have hereunto set my hand and seal the 12th day of May, one thousand Nine Hundred and Three.

GEORGE MORTON, [Seal]

Sealed and delivered in presence of
Sidney T. Blane.

561 United States of America,
State of Illinois,
County of Cook—ss.

Be It Known, That on the 12th day of May, one thousand Nine Hundred and Three, before me personally appeared George Morton above named who is to me known to be the person described in and who executed the above Letter of Attorney and acknowledged the same to be his free act and deed.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

HERBERT HAASE,
[Seal] Notary Public.

Indorsed: Filed Jun 9, 1903. Geo. H. Thummel, Clerk.

562 Thereupon afterwards, to-wit: On the 9th day of June, 1903, Bonds in favor of plaintiff and Union National Bank, on behalf of the defendants George, Mary E., James H., and Chas. W. Morton, were filed, which said Bonds are in words and figures following, to-wit:

In the Circuit Court of the United States, in and for the District of Nebraska.

Sumner Wallace, Complainant,
No. 261. vs. Doc. T.
American National Bank, et al, Defendants.

Bond for Appeal.

Know All Men by These Presents,

That we, George Morton, principal, and James Morton of Omaha, Neb., surety, are held and firmly bound unto Sumner Wallace in the full and just sum of $50.00 to be paid to the said Sumner Wallace, his heirs, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this 9th day of June in the Year of our Lord, one thousand nine hundred and three.

Whereas, lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska in a suit pending in said Court wherein Sumner Wallace was plaintiff, and said George Morton was one of the defendants, a decree was rendered against the said George Morton and the said George Morton has obtained an order of the said Court allow-

ing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

563 Now, the condition of the above obligation is such, that if the said George Morton shall prosecute said appeal to effect and answer and pay all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

GEORGE MORTON
By Charles W. Morton, Atty. in Fact. [Seal]
JAMES MORTON [Seal]

Sealed and delivered in
presence of Edward Chapman.

Approved this 9th day of June, 1903.
By W. H. MUNGER, Judge.

Indorsed: Filed Jun 9, 1903. Geo. H. Thummel, Clerk.

564 In the Circuit Court of the United States in and for the District of Nebraska.

Sumner Wallace, Complainant,
Doc. T. No. 261. vs.
American National Bank, et al., Defendants.

Bond for Appeal.

Know All Men By These Presents,

That we, George Morton, principal, and James Morton of Omaha, Neb., surety, are held and firmly bound unto the Union National Bank of Omaha, Nebraska, in the full and just sum of $150.00 to be paid to the said Union National Bank of Omaha, Nebraska, its successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this 9th day of June in the year of our Lord, One Thousand Nine Hundred and Three.

Whereas, lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska, in a suit pending in said court, wherein Sumner Wallace was plaintiff and the said Union National Bank of Omaha was one of the defendants, and the said George Morton was one of the defendants, a decree was rendered against the said George Morton and the said George Morton has obtained an order of the said Court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

Now, the condition of the above obligation is such, that if the said George Morton shall prosecute said appeal to effect and answer and pay all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain
565 in full force and virtue.

GEORGE MORTON.
By Charles W. Morton, Atty. in Fact. [Seal]
JAMES MORTON. [Seal]

Sealed and delivered in
presence of
Edward Chapman.

Approved this 9th day of June, 1903
By W. H. MUNGER, Judge.

Indorsed: Filed Jun. 9, 1903. Geo. H. Thummel, Clerk.

566 In the Circuit Court of the United States, in and for the District of Nebraska.

Sumner Wallace, Complainant,
Doc. T. No. 261. vs.
American National Bank, et al., Defendants.

Bond for Appeal.

Know All Men By These Presents,

That we, Mary E. Morton, principal, and James Morton of Omaha, Neb., surety, are held and firmly bound unto Sumner Wallace, in the full and just sum of $50.00 to be paid to the said Sumner Wallace, his heirs, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this 9th day of June in the year of our Lord One Thousand Nine Hundred and Three.

Whereas lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska in a suit pending in said Court, wherein Sumner Wallace was plaintiff, and said Mary E. Morton, was one of the defendants, a decree was rendered against the said Mary E. Morton and the said Mary E. Morton has obtained an order of the said court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

Now, the condition of the above obligation is such that if the said Mary E. Morton shall prosecute said appeal to effect

and answer and pay all damages and costs if [he] fails to make good [his] plea, then the above obligation to be void, else
567 to remain in full force and virtue.

MARY E. MORTON, [Seal]
JAMES MORTON. [Seal]

Sealed and delivered in
presence of
Edward Chapman.

Approved this 9th day of June 1903.
By W. H. MUNGER, Judge.

Indorsed: Filed: Jun. 9, 1903. Geo. H. Thummel, Clerk.

568 In the Circuit Court of the United States, in and for the District of Nebraska.

Sumner Wallace, Complainant,
No. 261. vs. Doc. T.
American National Bank, et al., Defendants.

Bond for Appeal.

Know All Men By These Presents,

That we, Mary E. Morton, principal, and James Morton of Omaha, Neb., surety, are held and firmly bound unto the Union National Bank of Omaha, Nebraska, in the full and just sum of $150.00 to be paid to the said Union National Bank of Omaha, Nebraska, its successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors jointly and severally by these presents.

Sealed with our seals and dated this 9th day of June in the year of our Lord, One Thousand Nine Hundred and Three.

Whereas, lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska, in a suit pending in said court, wherein Sumner Wallace was plaintiff and the said Union National Bank of Omaha was one of the defendants, and said Mary E. Morton was one of the defendants, a decree was rendered against the said Mary E. Morton and the said Mary E. Morton has obtained an order of the said court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

Now, the condition of the above obligation is such, that if the said Mary E. Morton shall prosecute said appeal to

effect and answer and pay all damages and costs if [he]
569 fails to make good [his] plea, then the above obligation to be void, else to remain in full force and virtue.

MARY E. MORTON, [Seal]
JAMES MORTON, [Seal]

Sealed and delivered in presence of
Edward Chapman.

Approved this 9th day of June, 1903.

By W. H. MUNGER, Judge.

Indorsed: Filed Jun 9, 1903. Geo. H. Thummel, Clerk.

570 In the Circuit Court of the United States, in and for the District of Nebraska.

Sumner Wallace, Complainant,
No. 261. vs. Doc. T.
American National Bank, et al., Defendants.

Bond for Appeal.

Know All Men By These Presents,

That we, James H. Morton principal, and James Morton of Omaha, Neb., surety, are held and firmly bound unto Sumner Wallace, in the full and just sum of $100.00 to be paid to the said Sumner Wallace, his heirs, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this 9th day of June in the year of our Lord One Thousand Nine Hundred and Three.

Whereas lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska in a suit pending in said Court, wherein Sumner Wallace was plaintiff, and said James H. Morton was one of the defendants, a decree was rendered against the said James H. Morton and the said James H. Morton has obtained an order of the said court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

Now, the condition of the above obligation is such that if the said James H. Morton shall prosecute said appeal to effect and

answer and pay all damages and costs if he fails to make good his plea, then the above obligation to be void, else to
571 remain in full force and virtue.

JAMES H. MORTON, [Seal]
JAMES MORTON, [Seal]

Sealed and delivered in presence of
Edward Chapman.

Approved this 9th day of June, 1903.
By W. H. MUNGER, Judge.

Indorsed: Filed Jun 9, 1903. Geo. H. Thummel, Clerk.

572 In the Circuit Court of the United States, in and for the District of Nebraska.

Sumner Wallace, Complainant,
No. 261. Doc. T. vs.
American National Bank, et al., Defendants.

Bond for Appeal.

Know all men by these presents,

That we, James H. Morton, principal, and James Morton of Omaha, Neb., surety, are held and firmly bound unto the Union National Bank of Omaha, Nebraska, in the full and just sum of $300.00 to be paid to the said Union National Bank of Omaha, Nebraska, its successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 9th day of June in the year of our Lord, One Thousand Nine Hundred and Three.

Whereas lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska, in a suit pending in said court, wherein Sumner Wallace was plaintiff and the said Union National Bank of Omaha was one of the defendants, and said James H. Morton was one of the defendants, a decree was rendered against the said James H. Morton and the said James H. Morton has obtained an order of the said court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

Now, the condition of the above obligation is such, that if the said James H. Morton shall prosecute said appeal to effect and

answer and pay all damages and costs if he fails to make
573 good his plea, then the above obligation to be void, else to remain in full force and virtue.

JAMES H. MORTON, [Seal]
JAMES MORTON. [Seal]

Sealed and delivered in presence
of Edward Chapman.

Approved this 9th day of June, 1903.

By W. H. MUNGER, Judge.

Indorsed: Filed Jun 9, 1903. Geo. H. Thummel, Clerk.

574 In the Circuit Court of the United States, in and for the District of Nebraska.

Sumner Wallace, Complainant,
No. 261. Doc. T. vs.
American National Bank, et al., Defendants.

Bond for Appeal.

Know All Men By These Presents:

That we, Chas. W. Morton, principal and James Morton of Omaha, Neb., surety, are held and firmly bound unto Sumner Wallace in the full and just sum of $300.00 to be paid to the said Sumner Wallace, his heirs, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this 9th day of June in the Year of our Lord, One Thousand Nine Hundred and Three.

Whereas lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska, in a suit pending in said Court, wherein Sumner Walla e was plaintiff, and said Chas. W. Morton was one of the defendants, a decree was rendered against the said Chas. W. Morton and the said Chas. W. Morton has obtained an order of the said court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

Now, the condition of the above obligation is such, that if the said Chas. W Morton shall prosecute said appeal to effect

and answer and pay all damages and costs if he fails to make good his plea, then the above obligation to be void, else to
575 remain in full force and virtue.

CHARLES W. MORTON, [Seal]
Sealed and delivered in presence of JAMES MORTON. [Seal]
Edward Chapman.

Approved this 9th day of June, 1903.

By W. H. MUNGER, Judge.

576 In the Circuit Court of the United States, in and for the District of Nebraska.

Sumner Wallace, Complainant,
No. 261. vs. Doc. T.
American National Bank, et al., Defendants.

Bond for Appeal.

Know All Men By These Presents:

That we, Chas. W. Morton, principal and James Morton of Omaha, Neb, surety, are held and firmly bound unto the Union National Bank of Omaha, Nebraska in the full and just sum of $1000.00 to be paid to the said Union National Bank of Omaha, Nebraska, its successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this 9th day of June in the Year of our Lord, One Thousand Nine Hundred and Three.

Whereas lately at the May Term of the Circuit Court of the United States in and for the District of Nebraska, in a suit pending in said Court, wherein Sumner Wallace was plaintiff, and said Chas. W. Morton was one of the defendants, a decree was rendered against the said Chas. W. Morton and the said Chas. W. Morton has obtained an order of the said court allowing an appeal to the Circuit Court of Appeals for the Eighth Circuit to reverse the decree in the aforesaid suit.

Now, the condition of the above obligation is such, that if the said Chas. W. Morton shall prosecute said appeal to effect and answer and pay all damages and costs if he fails to make

good his plea, then the above obligation to be void, else
577 to remain in full force and virtue.

CHARLES W. MORTON, [Seal]
JAMES MORTON, [Seal]

Sealed and delivered in presence of
Edward Chapman.

Approved this 9th day of June 1903.

By W. H. MUNGER, Judge.

Indorsed: Filed. Jun. 9, 1903. Geo. H. Thummel, Clerk.

578 Thereupon on said 9th day of June, 1903, Justification of James Morton as Surety for Defendants Morton, was filed in said case, which said Justification is in words and figures following, to-wit:

In the Circuit Court of the United States, in and for the District of Nebraska.

Sumner Wallace, Plaintiff,
Doc. T. vs. No. 261.
American National Bank, et als., Defendants.

State of Nebraska,
Douglas County—ss.

James Morton being duly [sowrn], says that he is a proposed surety for George Morton, Mary E. Morton, Charles W. Morton, and James H. Morton, defendants in the above entitled action, and that he is a resident and freeholder of said County; that he has a freehold Estate in land situate in said County, of the value of $..... over and above all liens and incumbrances thereon; and exclusive of any homestead or other land exempt from execution; and that he is worth in personal property situate in said County, the sum of $20000.00 over and above all his debts, liabilities and responsibilities, and exclusive of personal property exempt from execution, and that he is worth in other real and personal property situate in said State, the sum of $10,000.00 over and above all liens and incumbrances thereon, and beyond all his debts and liabilities, and exclusive of property exempt from execution.

JAMES MORTON.

579 Sworn to before me, and signed in my presence this 9th day of June A. D., 1903.

GEO. H. THUMMEL, Clerk.
By John Nicholson, Deputy.

[Seal U. S. Circuit Court.]

Indorsed: Filed. Jun. 9, 1903. Geo. H. Thummel, Clerk.

580 Thereupon afterwards, to-wit: On the 1st day of July, 1903, Praecipe and Notice was filed in said case, which said Praecipe and Notice is in words and figures following, to-wit:

In the Circuit Court of the United States in and for the District of Nebraska.

Sumner Wallace, Complainant,
Doc. T. 261. vs.
The American National Bank, et al., Defendants.

Praecipe.

To the Clerk of said Court:—

Please make a transcript of the following parts of the record in the above entitled case for appeal to the United States Court of Appeals, to-wit:

1. The bill of complaint filed August 18, 1898.
2. Memorandum of opinion of Judge Munger filed Sept. 29, 1899.
3. Motion to appoint James Burness, trustee, filed Dec. 5, 1899.
4. The order appointing James Burness trustee, entered Jan. 8, 1900.
5. The order granting leave to file amended bill, entered Feb. 7, 1900.
6. The amended bill filed Feb. 17th, 1900 and refiled Jan. 8, 1901.
7. The order granting leave to refile amended bill, etc. entered Jan. 8, 1901.
8. The joint and several answer of Charles W. Morton, James H. Morton, George Morton, and Mary E. Morton, filed June 29, 1901.
9. The answer of the Union National Bank filed Aug. 2, 1901.
10. The replication to the answers of all the defendants, filed Aug. 2, 1901.

581 11. All the evidence and depositions.

12. The journal entry of July 1, 1902, showing case heard on proofs and submitted.
13. Memorandum of opinion of Judge Munger filed Sept. 1, 1902.
14. The order confirming sale by James Burness, trustee, entered Dec. 9, 1902.
15. The order confirming the final report of James Burness, trustee, entered Jan. 3, 1903.

16. The memorandum of opinion of Judge Munger, filed April 24, 1903.
17. The decree entered May 23, 1903.
18. The petition for appeal and the assignment of errors, filed June 4th, 1903, by Charles W. Morton, James H. Morton, George Morton and Mary E. Morton.
19. The order allowing the appeal of Charles W. Morton, James H. Morton, George Morton, and Mary E. Morton, entered June 4th, 1903.
20. The several bonds filed by Charles W. Morton, James H. Morton, George Morton and Mary E. Morton.
21. This praecipe and Notice.

W. H. DeFRANCE,
Solicitor for Charles W. Morton, James H. Morton, George Morton and Mary E. Morton, Defendants.

To Sumner Wallace, complainant and the Union National Bank of Omaha, Defendant:

Please take notice that Charles W. Morton, James H. Morton, George Morton and Mary E. Morton, defendants in the above entitled cause, deem the parts of the record specified in the foregoing praecipe all that is necessary for the hearing of their and each of their appeal in the United States Circuit Court of Appeals for the Eighth Circuit.

W. H. DeFRANCE,
Solicitor for said Defendants.

582 Received a copy of the foregoing praecipe and notice this 13 day of June, 1903.

HALL & McCULLOCH,
J. H. MACOMBER,
Solicitors and Counsel for said Sumner Wallace, and said Union National Bank of Omaha.

Indorsed: Filed Jul 1, 1903. Geo. H. Thummel, Clerk.

583 Thereupon afterwards, to-wit: On the 21st day of May, 1903, Motion to Revive was filed in said case, which said Motion is in words and figures following, to-wit:

In the United States Circuit Court in and for the District of Nebraska.

Sumner Wallace, Complainant,
T. 261. vs.
American National Bank, et al., Respondents.

Motion.

Now comes George W. McClellan as Executor of the Estate of Robert H. McClellan, deceased, and shows to the Court that

the said Robert H. McClellan died on the.....day of August, 1902, and that the said George W. McClellan has been regularly and legally appointed as Executor of the Estate of Robert H. McClellan, deceased, has qualified as such Executor, and is acting as such Executor.

The said George W. McClellan, as Executor of the Estate of Robert H. McClellan, deceased, moves the Court for an order reviving this cause against him as Executor, and asks to be made a party defendant, and that the answer and defense of Robert H. McClellan in this action stand for the answer and defense of the said George W. McClellan as Executor.

May 16, 1903.

CHAS. BATTELLE,
Solicitor for George W. McClellan, as Executor of the Estate of Robert H. McClellan, deceased.

Indorsed: Filed May 21, 1903. Geo. H. Thummel, Clerk.

584 Thereupon afterwards, to-wit: At the May 1903 Term of said Court, and on the 21st day of May, 1903, the following Order of Revivor was signed and filed in said case, and duly entered of record in Journal No. 2 of said Court to-wit:

Sumner Wallace, Complainant,
T. 261. vs.
The American National Bank, et al., Respondents.

Order.

Now on this 16th day of May, 1903, this cause coming on to be heard upon the application of George W. McClellan as Executor of the Estate of Robert H. McClellan, deceased, for an order reviving this cause and to allow him to become a defendant herein and to adopt the answer and defense of the said Robert H. McClellan for himself as Executor, and the complainant appearing by his counsel and consenting thereto, it is hereby

Ordered and Adjudged by the Court that this cause be and the same hereby is revived as to the said George W. McClellan as Executor, and he is hereby made a party defendant in place of and instead of the said Robert H. McClellan, deceased, and the answer and defense of the said Robert H. McClellan, deceased is hereby made the answer and defense of George W. McClellan, as Executor.

By the Court,
W. H. MUNGER, Judge.

Indorsed: Filed May 21, 1903. Geo. H. Thummel, Clerk.

585 Thereupon afterwards, to-wit: On the 22nd day of June, 1903, Assignment of Errors was filed in said case which said Assignment of Errors is in words and figures following, to-wit:

In the United States Circuit Court in and for the District of Nebraska.

Summer Wallace, Complainant,
Doc. "T". No. 261. vs.
The American National Bank, et al., Defendants.

Assignments of Errors.

And now on this 22 day of June, 1903, the McCague Investment Company, Thomas M. McCague, Alex. G. Charlton, Anna C. Crowell, George W. McClellan, Executor of the last will and testament of Robert H. McClellan, deceased, Emily J. Robinson, John Speer, Robert L. Brownlee, Caroline Carpenter, George Marples, J. H. Hawkins, John L. McCague, and John L. McCague, Thomas H. McCague, William L. McCague, and Alex. G. Charlton, partners under firm name and style of McCague Brothers, and Rufus B. Bullock, defendants in the above entitled action, come, and each of them comes, by their solicitor and says, and each of them says, that the decree in said case is erroneous and against the just rights of these said defendants and each of them, for the following reasons, to-wit:

1. The Circuit Court erred in rendering the decree against these defendants, and each of them, because said Court had not jurisdiction of said cause, that is to say: The Complainant, sues as the assignee of a chose in action, to-wit: a non-negotiable promissory note executed by the American National Bank of Omaha as maker and in favor of the Union National Bank of Omaha as payee, each of whom was at the time of the
586 execution and delivery of said note, and at the time of the filing of the original and amended bills a citizen and resident of the State of Nebraska.

2. The Circuit Court erred in rendering decree against these defendants, and against each of these defendants, because said Court had not jurisdiction of said cause, that is to say: The said American National Bank had not gone into voluntary liquidation pursuant to Section 5220 of the Revised Statutes of the United States at any time prior to the rendition of said decree.

3. The Circuit Court erred in rendering decree against these defendants, and against each of these defendants, because said Court had not jurisdiction of the cause, that is to say: The

Complainant had not reduced his claim to judgment against the American National Bank and exhausted his remedy at law.

4. The Circuit Court erred in rendering said decree against these defendants and against each of these defendants, and adjudging these defendants and each of these defendants to pay to the Complainant, Sumner Wallace, the following sums, to-wit:

	McCague Investment Company the sum of.	$465.20
	Thomas H. McCague, the sum of	232.60
	Alex. G. Charlton, the sum of	209.34
	Anna C. Crowell, the sum of	226.77
	George W. McClellan, Executor of last will and testament of Robert H. McClellan, deceased, the sum of	1163.
	Emily J. Robinson, the sum of	34.89
	John Speer, the sum of	232.60
	R. L. Brownlee, the sum of	581.50
	Caroline Carpenter, the sum of	418.68
587	George Marples, the sum of	$348.90
	J. H. Hawkins, the sum of	581.50
	John L. McCague, the sum of	6675.62
	John L. McCague, Thomas H. McCague, William L. McCague, and Alex. G. Charlton, partners doing business under the firm name and style of McCague Brothers, the sum of	1163.00
	Rufus B. Bullock, the sum of	523.35

because the agreement between the American National Bank and the Union National Bank, dated December 21, 1895, a copy of which is attached to the amended bill of complaint as Exhibit "A" and the alleged promissory note set out in the said bill, are ultra vires and void, and created no liability for which shareholders are responsible.

5. The Circuit Court erred in rendering the said decree against these defendants, and against each of these defendants, and in adjudging these defendants, and each of these defendants, to pay to said Complainant, Sumner Wallace, the following sums, to-wit:

McCague Investment Company, the sum of	$ 465.20
Thomas H. McCague, the sum of	232.60
Alex. G. Charlton, the sum of	209.34
Anna C. Crowell, the sum of	226.77
George W. McClellan, Executor of last will and testament of Robert H. McClellan,, deceased, the sum of	1163.00

	Emily J. Robinson, the sum of	34.89
	John Speer, the sum of	232.60
	R. L. Brownlee, the sum of	581.50
	Caroline Carpenter, the sum of	418.68
588	George Marples, the sum of	$348.90
	J. H. Hawkins, the sum of	581.50
	John L. McCague, the sum of	6675.62
	John L. McCague, Thomas H. McCague, William L. McCague and Alex. G. Charlton, partners doing business under the firm name and style of McCague Brothers, the sum of	1163.00
	Rufus B. Bullock, the sum of	523.35

Because the obligation of the American National Bank sued on is not an obligation incurred, contracted, or assumed in the course of the business of banking.

6. The Circuit Court erred in rendering said decree against these defendants, and against each of these defendants, and in adjudging these defendants and each of these defendants, to pay to the Union National Bank, the following sums, to-wit:

McCague Investment Company the sum of	$1479.40
Thomas H. McCague, the sum of	739.70
Alex. G. Charlton, the sum of	665.73
Anna C. Crowell, the sum of	721.20
George W. McClellan, Executor of the last will and testament of Robert H. McClellan, deceased, the sum of	3698.50
Emily J. Robinson, the sum of	110.95
John Speer, the sum of	739.70
R. L. Brownlee, the sum of	1849.25
Caroline Carpenter, the sum of	1331.46
George Marples, the sum of	1109.55
J. H. Hawkins, the sum of	21849.25
John L. McCague, the sum of	31229.39
John L. McCague, Thomas H. McCague, William L. McCague, and Alex. G. Charlton, partners doing business under firm name and style of McCague Brothers, the sum of	3698.50
Rufus B. Bullock, the sum of	1664.32

589 because the agreement between the American National Bank and the Union National Bank, dated December 21, 1895, a copy of which is attached to the amended bill of Com-

plaint, and the alleged promissory notes sued on in the answer or claim of the Union National Bank are ultra vires and void, and create no liability for which shareholders are responsible.

7. The Circuit Court erred in rendering said decree and in adjudging these defendants and each of these defendants to pay to the Union National Bank the sums as set forth after each of their names in the above paragraph, or assignment of errors, numbered five (5), because the claim of the said Union National Bank is founded upon an alleged obligation of the American National Bank which was not incurred, assumed, or contracted, in the business of banking.

8. The Circuit Court erred in rendering said decree and in adjudging these defendants, and each of these defendants to pay to the Union National Bank the sums as set forth after each of their names in the above paragraph, or assignment of errors, numbered five (5), because said Court had not jurisdiction of these defendants, or either of these defendants, as to said claim.

9. The Circuit Court erred in not rendering a decree for these defendants, and for each of these defendants.

Wherefore these defendants pray, and each of them prays, that said decree be reversed, and that said Court may be directed to enter a decree dismissing said defendants and each of them, with his costs.

McCAGUE INVESTMENT COMPANY,
THOMAS H. McCAGUE,
ALEX. G. CHARLTON,
590 ANNA C. CROWELL,
GEORGE W. McCLELLAN,
Executor of the last will and testament of Robert H. McClellan, deceased,
EMILY J. ROBINSON,
JOHN SPEER,
R. L. BROWNLEE,
CAROLINE CARPENTER,
GEORGE MARPLES,
J. H. HAWKINS,
JOHN L. McCAGUE, and
JOHN L. McCAGUE,
THOMAS H. McCAGUE,
WILLIAM L. McCAGUE and
ALEX. G. CHARLTON,
Partners doing business under firm name and style of McCague Bros.
and RUFUS B. BULLOCK,
By Chas. Battelle, Their Solicitor.

Indorsed: Filed Jun. 22, 1903. Geo. H. Thummel, Clerk.

591 Thereupon afterwards, to-wit: On the 22nd day of June, 1903, Petition for Appeal was filed in said case, which said Petition for Appeal is in words and figures following, to-wit:

In the United States Circut Court in and for the District of Nebraska.

Sumner Wallace, Complainant,
Doc. "T". vs. No. 261.
The American National Bank, et al., Defendants.

Petition for Appeal.

Comes now the McCague Investment Company, Thomas H. McCague, Alex. G. Charlton, Anna C. Crowell, George W. McClellan, Executor of the last will and testament of Robert H. McClellan, deceased, Emily J. Robinson, John Speer, Robert L. Brownlee, Caroline Carpenter, George Marples, J. H. Hawkins, John L. McCague and John L. McCague, Thomas H. McCague, William L. McCague and Alex. G. Charlton, partners under firm name and style of McCague Brothers, and Rufus B. Bullock, defendants, and now comes each of said defendants in the above entitled action, and conceiving themselves, and each conceiving himself or itself aggrieved by the decree entered in the above entitled cause on the 23rd day of May, 1903, do, and each of them does, hereby appeal from said decree to the United States Court of Appeals for the Eighth Circuit for the reasons specified in the assignment of errors filed herewith, and pray, and each of them prays, that this appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said final decree, was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the eighth circuit.

592 And now, at the time of filing this petition, the said defendants and each of said defendants, files an assignment of errors, setting up separately and particularly each error asserted and intended to be urged in the United States

Circuit Court of Appeals for the eighth circuit. And your petitioners, and each of them, will ever pray.

Dated, June 22, 1903.

McCAGUE INVESTMENT COMPANY,
THOMAS H. McCAGUE,
ALEX. G. CHARLTON,
ANNA C. CROWELL,
GEORGE W. McCLELLAN,
Executor of the last will and testament of Robert H. McClellan, deceased,
EMILY J. ROBINSON,
JOHN SPEER,
ROBERT L. BROWNLEE,
CAROLINE CARPENTER,
GEORGE MARPLES,
J. H. HAWKINS,
JOHN L. McCAGUE, and
JOHN L. McCAGUE,
THOMAS H. McCAGUE,
WILLIAM L. McCAGUE and
ALEX. G. CHARLTON,
Partners under firm name and style of McCague Brothers,
and RUFUS B. BULLOCK,
By Chas. Battelle, Their Solicitor.

Indorsed: Filed Jun. 22, 1903. Geo. H. Thummel, Clerk.

593 Thereupon afterwards, to-wit: At the May 1903 Term of said Court and on the 22nd day of June, 1903 the following Order Allowing Appeal was signed and filed in said case, and duly entered of record in Journal No. 2 of said Court, to-wit:

Sumner Wallace, Complainant,
Doc. "T". No. 261. vs.
American National Bank, et al., Defendants.

Order Allowing Appeal.

On motion of the solicitor of each of the following named defendants in the above entitled action, to-wit: McCague Investment Company, Thomas H. McCague, Alex. G. Charlton, Anna C. Crowell, George W. McClellan, Executor of the last will and testament of Robert H. McClellan, deceased, Emily J. Robinson, John Speer, Robert L. Brownlee, Caroline Carpenter, George Marples, J. H. Hawkins, John L. McCague and John L. McCague, Thomas H. McCague, William L. McCague and Alex. G. Charlton, partners doing business under firm name and style of McCague Brothers, and Rufus B. Bullock, it is

Ordered, in open Court, that an appeal to the United States Circuit Court of Appeals for the Eighth Circuit from the final decree heretofore filed and entered herein be, and the same hereby is allowed, and that a certified transcript of the record, testimony, papers and proceedings herein be forthwith transmitted to said United States Court of Appeals. It is further

Ordered that the bonds on appeal for each of the defendants who do not desire to supersede said decree be fixed at the sum of $200.00 which shall be for costs only, but which shall
594 not operate as a supersedeas bond. It is further

Ordered that any or all of the defendants whose bonds shall be approved, may join in such appeal without prejudice to any special or peculiar rights or defenses they or any of them may have, and that one record only be transmitted to said United States Court of Appeals, which shall be equally available to each and all of said defendants.

Dated June 22, 1903.

W. H. MUNGER, Judge.

Indorsed: Filed Jun. 22, 1903. Geo. H. Thummel, Clerk.

595 Thereupon afterwards, to-wit: On the 22nd day of June, 1903, Cost Bond was filed in said case, which said Cost Bond is in words and figures following, to-wit:

Know All Men By These Presents: That we, McCague Investment Company, Thomas H. McCague, Alex. G. Charlton, Anna C. Crowell, George W. McClellan, Executor of the last will and testament of Robert H. McClellan, deceased, Emily J. Robinson, John Speer, R. L. Brownlee, Caroline Carpenter, George Marples, J. H. Hawkins, John L. McCague, and John L. McCague, Thomas H. McCague, William L. McCague and Alex. G. Charlton, partners as McCague Brothers, and Rufus B. Bullock, as principals are each held and firmly bound unto Sumner Wallace in the full and just sum of Two Hundred (200) Dollars, and we William J. Hislop and G. S. Benawa, as sureties, are held and firmly bound unto Sumner Wallace in the full and just sum of Two Hundred (200) Dollars for each of said above named principals, to be paid to the said Sumner Wallace, his heirs, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 20 day of June in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May term, A. D. 1903 of the Circuit Court of the United States for the District of Nebraska, in a suit depending in said Court between Sumner Wallace, Com-

plainant, and American National Bank, et al., and the said McCague Investment Company and the other above named principals to this bond, have obtained an order allowing an appeal from the said Court to the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, to reverse the decree in the aforesaid suit.

596

Now the condition of the above obligation is such, That if the said McCague Investment Company, Thomas H. McCague, Alex. G. Charlton, Anna C. Crowell, George W. McClellan, Executor of the last will and testament of Robert H. McClellan, deceased, Emily J. Robinson, John Speer, R. L. Brownlee, Caroline Carpenter, George Marples, J. H. Hawkins, John L. McCague and John L. McCague, Thomas H. McCague, William L. McCague and Alex. G. Charlton, partners as McCague Brothers, and Rufus B. Bullock, shall prosecute said appeal to effect, and answer all costs if they and each of the said defendants named herein as principals, fail to make good their plea, and each of their pleas, then the above obligation to be void, else to remain in full force and virtue.

McCAGUE INVESTMENT COMPANY, [Seal]
THOMAS H. McCAGUE, [Seal]
ALEX. G. CHARLTON, [Seal]
ANNA C. CROWELL, [Seal]
GEORGE W. McCLELLAN, [Seal]
Executor of last will and testament of Robert H. McClellan, deceased.
EMILY J. ROBINSON, [Seal]
JOHN SPEER, [Seal]
Sealed and delivered in presence of Julia S. Fitch, M. A. St. Cyr, as to G. S. Benawa.
R. L. BROWNLEE, [Seal]
CAROLINE CARPENTER, [Seal]
GEORGE MARPLES, [Seal]
J. H. HAWKINS, [Seal]
JOHN L. McCAGUE, and [Seal]
JOHN L. McCAGUE, [Seal]
THOMAS H. McCAGUE, [Seal]
WILLIAM L. McCAGUE, and [Seal]
ALEX. G. CHARLTON, [Seal]
Partners as McCague Bros.,
and RUFUS B. BULLOCK, [Seal]
By Chas. Battelle, [Seal]
Their Solicitor.
WILLIAM J. HISLOP, [Seal]
G. S. BENAWA. [Seal]

Approved by W. H. MUNGER, Judge.

Indorsed: Filed Jun. 22, 1903. Geo. H. Thummel, Clerk.

597 Thereupon afterwards, to-wit: On the 22nd day of June, 1903, Cost Bond was filed in said case, which said Cost Bond is in words and figures following, to-wit:

Know All Men By These Presents: That we, McCague Investment Company, Thomas H. McCague, Alex. G. Charlton, Anna C. Crowell, George W. McClellan, Executor of the last will and testament of Robert H. McClellan, deceased, Emily J. Robinson, John Speer, R. L. Brownlee, Caroline Carpenter, George Marples, J. H. Hawkins, John L. McCague, and John L. McCague, Thomas H. McCague, William L. McCague, and Alex. G. Charlton, partners as McCague Brothers and Rufus B. Bullock, as principals are each held and firmly bound unto the Union National Bank of Omaha in the full and just sum of Two Hundred (200) Dollars, and we, William J. Hislop and G. S. Benawa, as sureties are held and firmly bound unto the Union National Bank of Omaha in the full and just sum of Two Hundred (200) Dollars for each of above named principals, to be paid to the Union National Bank of Omaha, its successors and assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals, and dated this 20 day of June in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the May Term A. D. 1903 of the Circuit Court of the United States for the District of Nebraska, in a suit depending in said Court between Sumner Wallace, Complainant, and American National Bank, et al., and the said McCague Investment Company and the other above named principals to this bond, have obtained an order allowing an appeal from the said Court to the United [—] Circuit
598 Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, to reverse the decree in the aforesaid suit.

Now the condition of the above obligation is such, That if the said McCague Investment Company, Thomas H. McCague, Alex. G. Charlton, Anna C. Crowell, George W. McClellan, Executor of the last will and testament of Robert H. McClellan, deceased, Emily J. Robinson, John Speer, R. L. Brownlee, Caroline Carpenter, George Marples, J. H. Hawkins, John L. McCague, and John L. McCague, Thomas H. McCague, William L. McCague and Alex. G. Charlton, partners as McCague Brothers, and Rufus B. Bullock shall prosecute said appeal to effect and answer all costs if they and each of the said de-

fendants named herein as principals, fail to make good their plea, and each of their pleas, then the above obligation to be void, else to remain in full force and virtue.

McCAGUE INVESTMENT CO. [Seal]
THOMAS H. McCAGUE [Seal]
ALEX. G. CHARLTON, [Seal]
ANNA C. CROWELL, [Seal]
GEORGE W. McCLELLAN, [Seal]
Executor of the last will and testament of Robert H. McClellan, deceased.

EMILY J. ROBINSON, [Seal]
JOHN SPEER, [Seal]
R. L. BROWNLEE, [Seal]
CAROLINE CARPENTER, [Seal]
GEORGE MARPLES, [Seal]
J. H. HAWKINS, [Seal]
JOHN L. McCAGUE and [Seal]
JOHN L. McCAGUE, [Seal]
THOMAS H. McCAGUE, [Seal]
WILIAM L. McCAGUE, and [Seal]
ALEX. G. CHARLTON, [Seal]
Partners as McCague Brothers,
and RUFUS B. BULLOCK, [Seal]
By Chas. Battelle, [Seal]
Their Solicitor.
WILLIAM J. HISLOP, [Seal]
G. S. BENAWA, [Seal]

Sealed and delivered in presence of Julia S. Fitch, M. A. St. Cyr, as to G. S. Benawa.

Approved by W. H. MUNGER, Judge.

Indorsed: Filed Jun. 22, 1903. Geo. H. Thummel, Clerk.

599 Thereupon afterwards, to-wit: On the 1st day of July, 1903, Praecipe was filed in said case, which said Praecipe is in words and figures following, to-wit:

In the United States Circuit Court for the District of Nebraska.

Sumner Wallace, Complainant,
No. 261. vs. Doc. "T".
American National Bank, et al., Defendants.

Praecipe.

To the Clerk of said Court:

Please make a transcript of the following parts of the record in the above entitled case for an appeal to the United States Court of Appeals, to-wit:

1. The Bill of Complaint filed August 18, 1898.

2. Memorandum of opinion of Judge Munger filed Sept. 29, 1899.

3. Motion to appoint James Burness, Trustee, filed Dec. 5, 1899.

4. Order appointing James Burness, Trustee, entered Jan. 8, 1900.

5. The order granting leave to file amended bill entered Feb. 7, 1900.

6. The amended bill filed Feb. 17, 1900 and refiled Jan. 8, 1901.

7. The order granting leave to refile amended bill, etc., entered Jan. 8, 1901.

8. The joint and several answer of McCague Investment Co., Thos. H. McCague, Alex. G. Charlton, Anna C. Crowell, Robert H. McClellan, Emily J. Robinson, John Speer, R. L. Brownlee, Caroline Carpenter, George Marples, J. H. Hawkins, John L. McCague, and John L. McCague, Thomas H. McCague, William L. McCague, and Alex. G. Charlton, partners doing business under firm name and style of McCague Bros., Rufus B. Bullock, and Alex. G. Charlton, Secretary, filed June 14, 1901.

9. The answer of the Union National Bank filed Aug. 2, 1901.

600 10. The replication to the answer of all the defendants filed Aug. 2, 1901.

11. All the evidence and depositions.

12. The journal entry of July 1, 1902, showing said case heard on proofs and submitted.

13. Memorandum of opinion of Judge Munger filed Sept. 1, 1902.

14. The order confirming sale by James Burness, Trustee, entered Dec. 9, 1902.

15. The order confirming the final report of James Burness, Trustee, entered Jan. 3, 1903.

16. The memorandum of opinion of Judge Munger filed April 24, 1903.

17. The motion of George W. McClellan, Executor of last will and testament of Robert H. McClellan, deceased, asking that the cause be revived in his name, etc., filed May 21, 1903.

18. The journal entry reviving said cause in name of George W. McClellan, as said Executor, etc., filed May 21, 1903.

19. The decree entered May 23, 1903.

20. The petition for appeal and the assignments of error filed June 22nd, 1903, by McCague Invetsment Co., et al.

21. The order allowing the appeal of the McCague Investment Company, and these other defendants who file this praecipe.

22. The several bonds filed by the McCague Investment Company and these other defendants whose names are subscribed to this praecipe.

23. This praecipe and notice.

CHAS. BATTELLE,

Solicitor for McCague Investment Company, Thomas H. McCague, Alex. G. Charlton, Anna C. Crowell, George H. McClellan, Executor of the last will and testament of Robert H. McClellan, deceased, Emily J. Robinson, John Speer, R. L. Brownlee, Caroline Carpenter, George Marples, J. H. Hawkins, John L. McCague and John L. McCague, Thomas H. McCague, William L. McCague and Alex. G. Charlton, partners doing business under firm name and style of McCague Bros., Rufus B. Bullock.

601 To Sumner Wallace, Complainant, and to Union National Bank of Omaha, Defendant:

Please take notice that the McCague Investment Company and the other defendants whose names are last above written, defendants in the above entitled cause, deem the parts of the record specified in the foregoing praecipe all that is necessary for their, and each of their appeal in the United States Circuit Court of Appeals for the Eighth Circuit.

CHAS. BATTELLE,
Solicitor for said Defendants.

Received a copy of the foregoing praecipe and notice this 22 day of June, 1903.

J. H. MACOMBER,
HALL & McCULLOCH,
Solicitors and Counsel for said Sumner Wallace and said Union National Bank of Omaha.

Indorsed: Filed Jul. 1, 1903. Geo. H. Thummel, Clerk.

United States of America,
602 District of Nebraska—ss.

I, Geo. H. Thummel, Clerk of the United States Circuit Court for the District of Nebraska, do hereby certify that in compliance with the Precipes of the Solicitors for the defendants taking an appeal herein, found on pages 489, 535, 545, 580 and 599 hereof, the following record has been made, and that the same is a true and faithful Transcript of the pleadings and proceedings of record and on file in said court, as mentioned in said Precipes and as indicated in the foregoing index; and

that the same includes all the evidence offered and received, in the case of "Sumner Wallace, Plaintiff vs. American National Bank, et al.", No. 261 Docket "T".

Seal United States Circuit Court District of Nebraska.

Witness my hand and the seal of said Court at Omaha in said District, this 18th day of July, 1903.

GEO. H. THUMMEL, Clerk.

Filed Jul 20 1903. John D. Jordan, Clerk.

(Appearance for Appellants in Cause No. 1954.)

On the twenty-third day of July, A. D. 1903, the appearance of counsel for appellants was filed in the case of George, *et al.*, *vs.* Wallace, *et al.*, No. 1954, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

CHARLES C. GEORGE ET AL., Appellants,
vs.
SUMNER WALLACE and UNION NATIONAL BANK OF Omaha, Nebraska. } No. 1954.

The clerk will enter my appearance as counsel for the appellants Charles C. George, Henry W. Wyman, Albert U. Wyman and Morris Levy.

HOWARD B. SMITH.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1954. Charles C. George, *et al.*, appellants, *vs.* Sumner Wallace, *et al.* Appearance. Filed Jul- 23, 1903, John D. Jordan, clerk. Howard B. Smith, counsel for appellants, Charles C. George, *et al.*

(Appearance for Appellees in Cause No. 1954.)

And on the nineteenth day of September, A. D. 1903, the appearance of counsel for appellees was filed in the case of George, *et al.*, *vs.* Wallace, *et al.*, No. 1954, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

CHARLES C. GEORGE ET AL., Appellants,
vs.
SUMNER WALLACE and UNION NATIONAL BANK OF Omaha, Nebraska. } No. 1954.

The clerk will enter *my* appearance as counsel for the appellees.

R. S. HALL.
J. H. McCULLOCH.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1954. Charles C. George, *et al.*, appellants, *vs.* Sumner Wallace, *et al.* Appearance. Filed Sep. 19, 1903, John D. Jordan, clerk. R. S. Hall, J. H. McCulloch, counsel for appellees.

(Appearance for Appellants in Cause No. 1955.)

And on the twenty-third day of July, A. D. 1903, the appearance of counsel for appellants was filed in the case of Brownlee, *et al.*, *vs.* Wallace, *et al.*, No. 1955, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

ELMER C. BROWNLEE ET AL., Appellants,
vs.
SUMNER WALLACE and UNION NATIONAL BANK OF Omaha, Nebraska. } No. 1955.

The clerk will enter my appearance as counsel for the appellants, Elmer C. Brownlee, George G. Wallace, Peter Frenzer, John N. Frenzer, and Howard B. Smith.

HOWARD B. SMITH.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1955. Elmer C. Brownlee, *et al.*, appellants, *vs.* Sumner Wallace, *et al.* Appearance. Filed Jul- 23, 1903, John D. Jordan, clerk. Howard B. Smith, counsel for appellants, Elmer C. Brownlee, *et al.*

(Appearance for Appellees in Cause No. 1955.)

And on the nineteenth day of September, A. D. 1903, the appearance of counsel for appellees was filed in the case of Brownlee, *et al.*, *vs.* Wallace, *et al.*, No. 1955, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

ELMER C. BROWNLEE ET AL., Appellants,
vs.
SUMNER WALLACE and UNION NATIONAL BANK OF Omaha, Nebraska. } No. 1955.

The clerk will enter *my* appearance as counsel for the appellees.

R. S. HALL.
J. H. McCULLOCH.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1955. Elmer C. Brownlee, *et al.*, appellants, *vs.* Sumner Wallace, *et al.* Appearance. Filed Sep. 19, 1903, John D. Jordan, clerk. R. S. Hall, J. H. McCulloch, counsel for appellees.

(Appearance for Appellant in Cause No. 1956.)

And on the twenty-third day of July, A. D. 1903, the appearance of counsel for appellant was filed in the case of Morsman *vs.* Wallace, *et al.*, No. 1956, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

EDWARD M. MORSMAN, Appellant,
vs.
SUMNER WALLACE and UNION NATIONAL BANK OF Omaha, Nebraska. } No. 1956.

The clerk will enter my appearance as counsel for the appellant, Edgar M. Morsman.

W. W. MORSMAN.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1956. Edgar M. Morsman, appellant, *vs.* Sumner Wallace, *et al.* Appearance. Filed Jul- 23, 1903, John D. Jordan, clerk. W. W. Morsman, counsel for appellant, Edgar M. Morsman.

(Appearance for Appellees in Cause No. 1956.)

And on the nineteenth day of September, A. D. 1903, the appearance of counsel for appellees was filed in the case of Morsman *vs.* Wallace *et al.*, No. 1956, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

EDGAR M. MORSMAN, Appellant,
vs.
SUMNER WALLACE and UNION NATIONAL BANK OF Omaha, Nebraska. } No. 1956.

The clerk will enter *my* appearance as counsel for the appellees.

R. S. HALL.
J. H. McCULLOCH.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1956. Edgar M. Morsman, appellant, *vs.* Sumner Wallace, *et al.* Appearance. Filed Sep. 19, 1903, John D. Jordan, clerk. R. S. Hall, J. H. McCulloch, counsel for appellees.

(Appearance for Appellant in Cause No. 1957.)

And on the twenty-second day of July, A. D. 1903, the appearance of counsel for appellant was filed in the case of Poppleton *vs.* Wallace, *et al.*, No. 1957, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

WILLIAM S. POPPLETON, Appellant,
vs.
SUMNER WALLACE and UNION NATIONAL BANK OF Omaha, Nebraska. } No. 1957.

The clerk will enter my appearance as counsel for the appellant, William S. Poppleton.

RICHARD S. HORTON.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1957. William S. Poppleton, appellant, *vs.* Sumner Wallace, *et al.* Appearance. Filed Jul- 22, 1903, John D. Jordan, clerk. Richard S. Horton, counsel for appellant, Wm. S. Poppleton.

(Appearance for Appellees in Cause No. 1957.)

And on the nineteenth day of September, A. D. 1903, the appearance of counsel for appellees was filed in the case of Poppleton *vs.* Wallace, *et al.*, No. 1957, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

WILLIAM S. POPPLETON, Appellant,
vs.
SUMNER WALLACE and UNION NATIONAL BANK OF Omaha, Nebraska. } No. 1957.

The clerk will enter *my* appearance as counsel for the appellees.

R. S. HALL.
J. H. McCULLOCH.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1957. William S. Poppleton, appellant, *vs.* Sumner Wallace, *et al.* Appearance. Filed Sep. 19, 1903, John D. Jordan, clerk. R. S. Hall, J. H. McCulloch, counsel for appellees.

(Appearance for Appellants in Cause No. 1959.)

And on the first day of August, A. D. 1903, the appearance of counsel for appellants was filed in the case of McCague Investment Company, *et al.*, *vs.* Wallace, *et al.*, No. 1959, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

THE McCAGUE INVESTMENT COMPANY ET AL., Appellants,
vs.
SUMNER WALLACE and UNION NATIONAL BANK OF Omaha, Nebraska. } No. 1959.

The clerk will enter my appearance as counsel for the appellants, The McCague Investment Company, Thomas H. McCague, Alex. G. Charlton, Anna C. Crowell, George W. McClellan, executor of the last will and testament of Robert H. McClellan, deceased, Emily J. Robinson, John Speer, Robert L. Brownlee, Caroline Carpenter, George Marples, J. H. Hawkins, John L. McCague; and John L. McCague, Thomas H. McCague, William L. McCague and Alex. G. Charlton, partners under firm name and style of McCague Brothers, and Rufus B. Bullock.

CHAS. BATTELLE,
Counsel for Appellants Above Named.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1959. McCague Investment Company, *et al.*, appellants, *vs.* Sumner Wallace, *et al.* Appearance. Filed Aug. 1, 1903, John D. Jordan, clerk. Chas. Battelle, counsel for McCague Inv. Co., *et al.*, appellants.

(Appearance for Appellees in Cause No. 1959.)

And on the nineteenth day of September, A. D. 1903, the appearance of counsel for appellees was filed in the case of McCague Investment Co., *et al.*, *vs.* Wallace, *et al.*, No. 1959, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

THE McCAGUE INVESTMENT CO. ET AL., Appellants,
vs.
SUMNER WALLACE and UNION NATIONAL BANK OF Omaha, Nebraska. } No. 1959.

The clerk will enter *my* appearance as counsel for the appellees.

R. S. HALL.
J. H. McCULLOCH.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1959. The McCague Investment Co., *et al.*, appellants, *vs.* Sumner Wallace, *et al.* Appearance. Filed Sep. 19, 1903, John D. Jordan, clerk. R. S. Hall, J. H. McCulloch, counsel for appellees.

(Stipulation for Submission of Cause No. 1959.)

And on the seventeenth day of November, A. D. 1903, a stipulation was filed in the case of McCague Investment Co., *et al.*, *vs.* Wallace, *et al.*, No. 1959, to submit the same on briefs in cases Nos. 1954, 1955 and 1956, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

THE McCAGUE INVESTMENT COMPANY ET AL., Appellants,
vs.
SUMNER WALLACE ET AL., Appellees.
} No. 1959.

Stipulation as to Briefs.

It is hereby stipulated and agreed by and between The McCague Investment Company and all the other appellants in this appeal and Sumner Wallace and The Union National Bank, appellees, that the filing of briefs in the above entitled appeal is waived, and that the briefs filed or to be filed in the appeals of Chas. C. George, *et al.*, *vs.* Sumner Wallace, *et al.*, No. 1954, and the appeal of Elmer C. Brownlee, *et al.*, *vs.* Sumner Wallace, *et al.*, No. 1955, and the appeal of Edgar M. Morsman *vs.* Sumner Wallace, *et al.*, number 1956, are to be and stand as and for the briefs of the appellants and appellees in the above entitled action.

CHAS. BATTELLE,
Solicitor for The McCague Investment Company *et al.*, Appellants.
HALL & McCULLOCH,
Solicitor for Sumner Wallace, Appellee.
HALL & McCULLOCH,
Solicitor for The Union National Bank *et al.*, Appellees.

(Endorsed:) No. 1959. In U. S. circuit court of appeals (8th circuit) The McCague Investment Company, *et al.*, appellants, *vs.* Sumner Wallace, *et al.*, appellees. Stipulation to submit on briefs in cases Nos. 1954, 1955 and 1956. Filed Nov. 17, 1903, John D. Jordan, clerk. Chas. Battelle, solicitor for the McCague Inv. Co., *et al.*

(Argument Commenced.)

And on the fourth day of January, A. D. 1904, in the record of the proceedings of said circuit court of appeals is an entry in said causes Nos. 1954, 1955, 1956, 1957 and 1959, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1903.

MONDAY, January 4, 1904.

CHARLES C. GEORGE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL. } No. 1954.

Appeal from the Circuit Court of the United States for the District of Nebraska.

ELMER C. BROWNLEE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL. } No. 1955.

Appeal from the Circuit Court of the United States for the District of Nebraska.

EDGAR M. MORSMAN, Appellant,
vs.
SUMNER WALLACE ET AL. } No. 1956.

Appeal from the Circuit Court of the United States for the District of Nebraska.

WILLIAM S. POPPLETON, Appellant,
vs.
SUMNER WALLACE ET AL. } No. 1957.

Appeal from the Circuit Court of the United States for the District of Nebraska.

* * * * * * *

THE MCCAGUE INVESTMENT COMPANY ET AL., Appellants,
vs.
SUMNER WALLACE ET AL. } No. 1959.

Appeal from the Circuit Court of the United States for the District of Nebraska.

These causes having been called for hearing in their regular order, argument was commenced by Mr. Howard B. Smith in behalf of appellants, Charles C. George, *et al.*, and Elmer C. Brownlee, *et al.*, but the argument not having been concluded at the hour of adjournment, the further hearing of these causes was postponed until tomorrow morning.

(Order of Submission of Causes Nos. 1954, 1955, 1956, and 1957.)

And on the fifth day of January, A. D. 1904, in the record of the proceedings of said circuit court of appeals is an order of submission in said causes Nos. 1954, 1955, 1956 and 1957, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1903.

TUESDAY, January 5, 1904.

CHARLES C. GEORGE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL. } No. 1954.

Appeal from the Circuit Court of the United States for the District of Nebraska.

ELMER C. BROWNLEE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL. } No. 1955.

Appeal from the Circuit Court of the United States for the District of Nebraska.

EDGAR M. MORSMAN, Appellant,
vs.
SUMNER WALLACE ET AL. } No. 1956.

Appeal from the Circuit Court of the United States for the District of Nebraska.

WILLIAM S. POPPLETON, Appellant,
vs.
SUMNER WALLACE ET AL. } No. 1957.

Appeal from the Circuit Court of the United States for the District of Nebraska.

These causes having been called this day for further hearing, argument was continued by Mr. Howard B. Smith, counsel for appellants, Charles C. George, *et al.*, and Elmer C. Brownlee, *et al.*, by Richard S. Horton, counsel for appellant, William S. Poppleton, by Mr. R. S. Hall, for the appellees and concluded by Mr. W. W. Morsman, counsel for appellant, Edgar M. Morsman.

Thereupon these causes were submitted to the court upon the transcript of record from said circuit court and the briefs of counsel filed in these cases.

(Order of Submission of Cause No. 1959.)

And on the fifth day of January, A. D. 1904, in the record of the proceedings of said circuit court of appeals is an order of submission in said cause No. 1959, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1903.

TUESDAY, January 5, 1904.

THE McCAGUE INVESTMENT COMPANY ET AL., Appellants, *vs.* SUMNER WALLACE ET AL. } No. 1959.

Appeal from the Circuit Court of the United States for the District of Nebraska.

This cause having been called this day for further hearing, the same is now submitted to the court, pursuant to the stipulation of the parties, upon the transcript of record from said circuit court and the briefs of counsel filed in the cases of Charles C. George, *et al.*, appellants, *vs.* Sumner Wallace, *et al.*, No. 1954, Elmer C. Brownlee, *et al.*, appellants, *vs.* Sumner Wallace, *et al.*, No. 1955, and Edgar M. Morsman, appellant, *vs.* Sumner Wallace, *et al.*, No. 1956.

(Opinion.)

And on the eighth day of December, A. D. 1904, an opinion of said circuit court of appeals was filed in said causes Nos. 1954, 1955, 1956, 1957, 1958 and 1959, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1904.

CHARLES C. GEORGE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL., Appellees. } No. 1954.

ELMER C. BROWNLEE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL., Appellees. } No. 1955.

EDGAR M. MORSMAN, Appellant,
vs.
SUMNER WALLACE ET AL., Appellees. } No. 1956.

WILLIAM S. POPPLETON, Appellant,
vs.
SUMNER WALLACE ET AL., Appellees. } No. 1957.

CHARLES W. MORTON ET AL., Appellants,
vs.
SUMNER WALLACE ET AL., Appellees. } No. 1958.

THE MCCAGUE INVESTMENT COMPANY ET AL., Appellants,
vs.
SUMNER WALLACE ET AL., Appellees. } No. 1959.

Appeals from the Circuit Court of the United States for the District of Nebraska.

Mr. W. W. Morsman, Mr. Howard B. Smith and Mr. Richard S. Horton for appellants.

Mr. R. S. Hall (Mr. J. H. McCulloch and Mr. James H. Macomber were with him on the brief) for appellees.

Before Sanborn, Thayer, and Hook, Circuit Judges.

These are appeals from a decree of the circuit court of the United States for the district of Nebraska enforcing the liability of the appellants as shareholders of the American National Bank of Omaha. In December, 1895, the managing officers of that bank anticipated the withdrawal, about the first of the following year, of a large amount of deposits. The condition of the bank was such that it had not available funds sufficient to meet the expected demands and to thereafter continue in business and comply with the requirements of the national banking act. Consequently on December 21, 1895, a contract was entered into with the Union national bank of

the same city, the terms of which, so far as need be recited, are as follows: The Union national assumed the payment of the liabilities of the American national to its depositors and on account of bills payable, and in return was to receive its cash, cash items and such bills receivable as the former was willing to accept at par and without recourse. The difference between the aggregate of the amounts so received and the gross amount of liabilities assumed was to be represented by three non-negotiable promissory notes of the American national, the payment of which was to be secured by a pledge of all of its remaining assets to Thomas L. Kimball as trustee. This contract was carried out. The Union national moved into and took possession of the quarters of the retiring bank. It was ascertained that the total indebtedness of the American national on account of deposits, demand and time certificates and bills payable, which were assumed by the Union national, amounted to $289,097.30; that the cash, cash items and bills receivable taken without recourse by the Union national aggregated $88,097.30; that a balance of $201,000 remained. To evidence this balance the president and cashier of the American national executed to the Union national three non-negotiable promissory notes, each for $67,000, payable respectively in one, two, and three years from their date, December 23, 1895. In accordance with the contract the remaining assets of the American national were placed in the hands of Thomas L. Kimball, the president of the American national, as trustee for the contracting parties and for the protection of their respective rights under the contract. Kimball as trustee retained possession and controlled the collection of them until his death, which occurred during the pendency of the complainant's suit, when his successor, James Burness, was appointed and thereafter continued in the performance of the trust duties. The assets which were pledged to the Union national, although of large amount in face value, were found to be of little actual worth. The execution of the contract of December 21, 1895, by the president and cashier of the American national, was directed by resolution of the board of directors of that bank. On January 14, 1896, an annual meeting of the shareholders of that bank was held, at which were represented sixteen hundred and sixty-five and three-fourths shares out of a total of two thousand. At this meeting a resolution was adopted instructing the directors to take action looking to the liquidation of the bank. On February 25, 1896, another meeting of the shareholders was held, at which were represented sixteen hundred and ninety-six shares and at which a resolution for the voluntary liquidation of the bank was adopted by an affirmative vote of sixteen hundred and thirty-nine and three fourths shares. Thomas L. Kimball, theretofore appointed as trustee of the remaining assets of the bank, by the contract of December 21, 1895, was designated in the resolution as the agent and trustee of the shareholders in the liquidation proceedings. All of the subsequent proceedings provided by law for voluntary liquidation were thereupon duly adopted. The Union national ful-

filled its obligations under the contract, having taken up the liabilities assumed by it. It being found that the trustee was meeting with little success in the collection of the assets and that the principal of the note first maturing had been but slightly reduced, this suit was instituted August 8, 1898, by Sumner Wallace, a citizen of New Hampshire, as the assignee of the note, against the Union national, Thomas L. Kimball, trustee, and the American national and its stockholders, including the appellants. By an amended bill the complainant sought, on behalf of himself and all of the other creditors of the American national, the winding up of the affairs of that bank, the determination of the amount due him upon his note, the subjection of the remaining assets to the payment of his claim, the ascertainment of all of the creditors and the amounts of their claims, and the enforcement of the liability of the stockholders. The complainant had not reduced his note to judgment prior to the institution of the suit. During the progress of the suit the uncollected assets were sold by order of the court and the proceeds accounted for. Upon final hearing a decree was entered ascertaining the amounts due the complainant and the Union national after the application of all credits, the number of shares of stock held by each shareholder of the American national and against each defendant shareholder for $97.23 per share of stock held by him. The amount of the recovery was appropriately apportioned between the two creditors. From this decree the appeals were prosecuted.

HOOK, circuit judge, after stating the case as above, delivered the opinion of the court.

The complainant, a citizen of New Hampshire, sued as the assignee of a non-negotiable promissory note. His assignor, the payee of the note, is a national bank located in the State of Nebraska, and is therefore to be deemed a citizen of that State so far as concerns the question of jurisdiction. Most of the appellants are also citizens of Nebraska. This being so, some ground of Federal jurisdiction other than diversity of citizenship must be found to exist to justify the maintenance of the suit against them. May it be found in the provisions of the acts of Congress relating to cases for the winding up of the affairs of the national banking associations and to enforce the liability of shareholders of such associations as may have gone into voluntary liquidation? It is obvious that any case of such a character would be one arising under the laws of the United States of which, in the absence of some specific limitation of the general grant of jurisdiction, a circuit court would have cognizance irrespective of the citizenship of the parties.

The statutes which are pertinent to this question are as follows:

"Any (national banking) association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock." (Sec. 5220 Rev. Stat.; U. S. Comp. Stat. 1901, p. 3503.)

"That when any national banking association shall have gone

into liquidation under the provisions of section five thousand two hundred and twenty of said statutes, the individual liability of the shareholders provided for by section fifty-one hundred and fifty-one of said statutes may be enforced by any creditor of such association by bill in equity, in the nature of a creditor's bill, brought by such creditor on behalf of himself and of all other creditors of the association, against the shareholders thereof, in any court of the United States having original jurisdiction in equity for the district in which such association may have been located or established." (Act of June 30, 1876, c. 156, sec. 2, 19 Stat. 63; U. S. Comp. Stat. 1901, p. 3509.)

"That the jurisdiction for suits hereafter brought by or against any association established under any law providing for national banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national banking associations may be doing business when such suits may be begun: And all laws and parts of laws of the United States inconsistent with this proviso be, and the same are hereby, repealed." (Proviso to sec. 4, act of July 12, 1882, c. 290, 22 Stat. 163; U. S. Comp. Stat. 1901, p. 3458.)

"That all national banking associations established under the laws of the United States shall, for the purpose of all actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located; and in such cases the circuit and district court shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State. The provisions of this section shall not be held to affect the jurisdiction of the courts of the United States in cases commenced by the United States or by direction of any officer thereof, or cases for winding up the affairs of any such bank." (Act of Aug. 13, 1888, c. 866, sec. 4, 25 Stat. 436; U. S. Comp. Stat. 1901, p. 514.)

Section 2 of the act of June 30, 1876, was not repealed either by the act of July 12, 1882, or by the judiciary act of August 13, 1888. The former authorizes suits against shareholders for the enforcement of their statutory liability, while the two latter relate exclusively to suits by or against the banking associations themselves. These subject matters, while closely related, are in a legal sense quite different. But even if the later acts could be said to cover in a general way the purpose of the first, nevertheless under well known rules of statutory construction, the law prescribing the special remedy in a particular case would stand unrepealed. That it is still in force and operative has been judicially recognized. Commercial Nat. Bank v. Weinhard, 192 U. S. 243, 250; Donald v. Thompson, 184 U. S. 71, 75; King v. Pomeroy, 121 Fed. 287, 58 C. C. A. 209; Williamson v. Bank, 115 Fed. 793, 52 C. C. A. 1.

Prior to the act of July 12, 1882, relating to national banking associations, the circuit courts of the United States had general cognizance of suits by or against national banks, but by the proviso of section 4 of that act such banks were placed for purposes of jurisdiction in the category of domestic corporations of the States in which they were respectively located, with an exception as to "suits between them and the United States or its officers and agents." This proviso was excerpted from the act of 1882 and embodied, with some change of phraseology, in section 4 of the judiciary act of March 3, 1887, and of the corrective act of August 13, 1888, the exception being expressed as follows: "The provisions of this section shall not be held to affect the jurisdiction of the courts of the United States in cases commenced by the United States or by direction of any officer thereof or cases for winding up the affairs of any such bank." Cases of the latter character were not in terms excepted from the prohibition of the act of 1882. It seem clear that section 4 of the act of 1888 was intended to displace and to be a substitute for the proviso of section 4 of the earlier act,

It was not the purpose of Congress, by either of these acts, to wholly deprive the circuit courts of jurisdiction of suits by or against national banks arising from the subject matter thereof. A suit which may be brought in a circuit court by or against a citizen of a State because it arises under the Constitution, laws or treaties of the United States, may for the same reason be brought in such court by or against a national bank located in the same State. (Petri *v.* National Bank, 142 U. S. 644, 647). All that was intended was that jurisdiction should no longer be asserted solely on the ground of the Federal origin of such banks—merely because of the source of their incorporation. In respect of jurisdiction they are to be considered as though they were organized under the laws of the States in which they are respectively located.

So far, therefore, as the case at bar may be considered as one to enforce the liability of the stockholders of a national bank which has gone into voluntary liquidation the jurisdiction of the circuit court is sustained by section 2 of the act of June 30, 1876.

But a broader and more satisfactory ground may be found in the provisions of the act of August 13, 1888. Section 1 of that act in general terms confers jurisdiction of causes arising under the laws of the United States, while those which are brought to wind up the affairs of national banks are expressly excepted from the prohibitions of section 4.

A suit against an insolvent national bank which has gone into voluntary liquidation to enforce a specific lien, or to enforce and judicially administer a trust previously created by contract, or to enforce and judicially administer the trust arising from the insolvency and proceedings in liquidation, is a suit arising under the laws of the United States. It is also a suit to wind up the affairs of such bank. The same is true of a suit to enforce the liability of the stockholders of such a bank. In Guarantee Co. *v.* Hanway, 104

Fed. 369, 44 C. C. A. 312, it was held by this court that an action to recover a judgment against an agent selected by the stockholders of a national bank to succeed a receiver appointed by the Comptroller of the Currency, and to enforce the same against the assets of the bank, is in effect a case to wind up its affairs under section 4 of the act of 1888. This case was followed in International Trust Co. *v.* Weeks, 116 Fed. 898, a suit to recover on a covenant in a lease from an agent appointed by the stockholders of a national bank to close its affairs. On appeal the jurisdiction of the court was upheld by virtue of section 4 of the act of 1888. Weeks *v.* Trust Co., 125 Fed. 379, — C. C. A. —. See, also, Snohomish County *v.* National Bank, 81 Fed. 518, which was a suit to enjoin the stockholders' agent, engaged in winding up the affairs of the bank, from proceeding further, and to procure the appointment of a receiver to take charge of the remaining assets.

The tangible assets of an insolvent national bank which is in the process of liquidation constitute, in the hands of the liquidating agent, a trust fund for the primary benefit of creditors, and so of the liability of the shareholders of a bank similarly circumstanced.

In King *v.* Pomeroy, *supra*, it was said that the enforcement of the liability of the stockholders of a national bank in process of liquidation and the distribution of the proceeds "is as much a part of the liquidation of the debts of the bank as the collection and distribution of the proceeds of its bills receivable or any other of its assets." There is no sound reason why, at the suit of one or more creditors on behalf of all, for the winding up of the affairs of the bank, there may not be had, if so desired, a complete judicial administration of the affairs of the bank, an ascertainment of the valid and subsisting claims against it, an enforcement of the trusts in respect of both the assets and the capital stock, and finally the distribution of the avails. Nor would a bill for such comprehensive relief be multifarious (Richmond *v.* Irons, 121 U. S. 27). All of these results are accomplished in an involuntary proceeding in liquidation under the direction of the Comptroller of the Currency which is said to constitute but one continuous transaction; and as was observed by the Supreme Court, "When in the case of voluntary liquidation the proceeding is instituted by one or more creditors for the benefit of all, by means of the jurisdiction of a court of equity, there seems to be no reason why the nature of the proceeding should be considered as changed. * * * The two subjects of applying the assets of the bank and enforcing the liability of the stockholders, however otherwise distinct, are by the statute made connected parts of the whole series of transactions which constitute the liquidation of the affairs of the bank." (Richmond *v.* Irons, *supra*.)

It was not essential to the maintenance of the suit in the court below that the complainant should have first reduced his demand to judgment. The debtor bank was insolvent and had gone into voluntary liquidation. The complainant, a contract creditor, asserted a lien

by way of pledge upon all of the undisposed assets of the bank and sought the establishment of his claim. All of such assets had been placed in the hands of a defendant who, by express contract, was constituted a trustee for the primary benefit of the Union National which became a creditor by the assumption and payment of the demands of all of the other creditors of the bank; and the complainant, as an assignee of the Union National, sought the enforcement of the trust thereby created. The defendant who was trustee under the contract was also the liquidating agent or trustee by virtue of his selection and appointment by the stockholders acting in the liquidation proceedings

A suit for the enforcement of a lien or for the enforcement and administration of a trust is one peculiarly of equitable cognizance and may be maintained by a contract creditor whose demand has not been reduced to judgment. Day *v.* Washburn, 24 How. 352; Case *v.* Beauregard, 101 U. S. 688; Townsend *v.* Vanderwerker, 160 U. S. 171, 178; Clews *v.* Jamieson, 182 U. S. 461, 478. In Oelrich *v.* Spain, 82 U. S. 211, the court said that whenever an element of trust existed, jurisdiction in equity was always conferred. In these respects the case at bar differs from those cited by the appellants. Jones *v.* Green, 68 U. S. 330; Smith *v.* R. Co., 99 U. S. 398; Scott *v.* Neely, 140 U. S. 106; Nat. Tube Works Co. *v.* Ballou, 146 U. S. 517; Hollins *v.* Brierfield Co., 150 U. S. 371. In the first three of these cases the absence of a lien was especially noticed and in the last, the absence of both a lien and an enforcible trust. It is no doubt true that the mere insolvency of a corporation will not in itself justify the maintenance of a suit in equity by a simple contract creditor and that the trust which is frequently spoken of as arising from that condition is not an express trust which attaches to the property of the insolvent for the direct benefit of the creditor, but is merely one *sub modo* which is recognized in the judicial administration of the affairs of the insolvent corporation. But when insolvency is accompanied, as in this case, by a conveyance of assets to a trustee and a pledge thereof for the benefit of creditors, and this is followed by affirmative proceedings in liquidation especially authorized by law and the selection by the shareholders of the same trustee as their liquidating agent, an express trust does attach to the assets of the insolvent corporation for the direct benefit of the creditors. Such a lien may be enforced and such a trust may be judicially administered at the suit of a simple contract creditor; and a court having lawfully acquired jurisdiction may, to give complete relief, proceed with the enforcement of the liability of the shareholders. Richmond *v.* Irons, *supra;* King *v.* Pomeroy, *supra.* In this connection it may be observed that, while in section 1 of the act of 1876 it is expressly provided that a creditor who is entitled to call upon the Comptroller of the Currency to institute involuntary proceedings against a national bank must have reduced his demand to judgment, by section 2 "any creditor" may file a bill against the shareholders of a bank in voluntary liquidation.

It is contended that in making the contract, executing the notes and transferring its assets the American National transcended its corporate powers and that no debt was thereby created which could be enforced against its shareholders. Ward *v.* Joslin, 186 U. S. 142. We may at the outset omit any consideration of what might be the case were these transactions dependent alone upon the authority of the officers and board of directors of the bank, for the evidence shows clearly that what was done by them was ratified and confirmed by the shareholders. The contract of December 21, 1895, was executed by Thomas L. Kimball as president of the American National pursuant to the instruction of a resolution of its board of directors. At the annual meeting of the shareholders held January 14, 1896, at which sixteen hundred and sixty-five out of a total of two thousand shares of stock were represented, the contract was read and an explanation made by the president of the condition of the bank which led up to and made its execution necessary. This was followed at the same meeting by the adoption of a resolution, by the votes of those representing more than sixteen hundred shares of stock, instructing the directors to take action looking to the liquidation of the bank. Pursuant to this resolution another meeting of the shareholders was held February 25, 1896, sixteen hundred and ninety-six shares being represented, at which a formal resolution for liquidation in accordance with sections 5220 and 5221 of the Revised Statutes was adopted by a vote of those owning sixteen hundred and thirty-nine and three-fourths shares, being some three hundred more than were necessary under the law. In this resolution it was provided that "Thos. L. Kimball be and he is hereby appointed the agent and trustee of the shareholders of such bank to effect such liquidation." The significance of this appointment is apparent when it is recalled that Kimball was also designated as the agent or liquidating trustee in the contract of December 21, 1895. Another shareholders' meeting was held Jan'y 12, 1897, at which fifteen hundred and thirty-one shares were represented, and at this meeting there was presented a comparative statement over the signature of Thomas L. Kimball, trustee, showing the condition of the bank on December 21, 1895, when the contract was made, and on January 1, 1897. It included an account of transactions during the progress of the liquidation, and an expression of views as to the best course to be pursued with reference to the remaining assets. Reference was definitely and explicitly made in this statement to the Union national and to the payment to it of proceeds of collections which had been made by the trustee. It was ordered to be spread upon the records of the bank. Shortly after the execution of the contract of December 21, 1895, and before the adoption of the resolution for liquidation, a writing containing an express ratification of the action of the directors in respect of the contract between the two banks was executed by the owners of more than two-thirds of the stock of the American national. At no meeting of the shareholders, so far as

the record shows, was there any word of criticism or objection to the transaction with the Union national except so far as it may be gathered from the mere fact that a small number of shares were voted against the resolution for liquidation. When it is considered that the Union national was engaged in carrying out its part of the contract, was disbursing its funds in taking up and caring for the contracts, debts and engagements of the American national, the duty of the shareholders of the latter in meeting assembled to then repudiate the transaction if they ever desired to do so was imperative. Instead of so doing they supplemented the transaction with the Union national by proceedings in voluntary liquidation adopted by a vote largely in excess of that required by law and conducted such liquidation in connection with and as part of the performance of the contract of December 21, 1895. Every consideration of equity, good conscience and justice leads to the conclusion that the shareholders should be held to have ratified and approved of what was done and what was then being done.

So far as the Union national was concerned the transaction between the two banks was in the exercise of its ordinary powers as a banking association. Schofield *v.* Bank, 97 Fed. 282, 38 C. C. A. 179. When the contract was entered into the American national was confronted by an emergency. A withdrawal from the bank of a large amount of deposits was anticipated and it had not the money or available cash resources to meet it and thereafter continue business. At the time, as subsequent experience demonstrated, the bank was in fact hopelessly insolvent. But in the light of the conditions which were known it was within the power of the officers and directors of that bank to make the contract of December 21, 1895, with the approval of the shareholders owning a larger proportion of the capital stock than was necessary under the law in case of a voluntary liquidation.

The expression "usual course of business" as one of limitation upon the powers of a corporation is generally referable to the activities of a going concern and has little, if any, application to one which is upon the threshold of liquidation because of insolvency. In the latter condition the managing officers of a corporation, with the approval of the shareholders, may make any fair and equitable disposition of its assets which, not being in violation of any provision of law, will insure the payment of all of its debts and is reasonably calculated to preserve the largest equity for its shareholders. In such an emergency a corporation should not be held to be helpless and incapable of an act of duty to creditors and of preservation of the interests of its shareholders merely because it may be outside of the usual routine or course of its business.

In the case at bar all of the obligations of the American national to the Government were fully performed, no duty was omitted which called for the interposition of the Comptroller of the Currency and no Federal statute was violated. Upon insolvency and the institution of proceedings in liquidation the assets of a national bank stand

pledged by law to the payment of the debts, and the surplus, if any, to a ratable distribution among the shareholders. The contract which is attacked by the appellants was intended to accomplish nothing substantially different. Instead of many creditors to be dealt with it was arranged that there should be one whose demands should embrace those of all of the others. And in considering the relation of the Union national and the complainant, its assignee, to the American national, we need not stop at the three notes which they hold. In the same sense that a shareholder may go behind a judgment recovered against his corporation to show the character of the indebtedness which it represents, so in a case like the one in hand may a creditor, holding a note of the bank, show if necessary the nature of the debt which is evidenced thereby. In equity the claims of the complainant and the Union national represent the "contracts, debts and engagements" of the American national for which the stockholders of the latter are responsible in accordance with the provisions of section 5151 of the Revised Statutes.

The complaint made on behalf of some of the appellants on account of the computation of interest upon the claims of the creditors was not made the subject of an assignment of error and is therefore not considered.

The decree of the circuit court is affirmed.

Filed December 8, 1904.

(Decree in Cause No. 1954.)

And on the eighth day of December, A. D. 1904, in the record of the proceedings of said circuit court of appeals is a decree in the case of George, *et al.*, *vs.* Wallace, *et al.*, No. 1954, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1904.

THURSDAY, December 8, 1904.

CHARLES C. GEORGE, HENRY F. WYMAN, ALBERT U. Wyman, and Morris Levy, Appellants,
vs.
SUMNER WALLACE and UNION NATIONAL BANK OF Omaha, Nebraska. } No. 1954.

Appeal from the Circuit Court of the United States for the District of Nebraska.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Nebraska, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court, in this cause, be, and the same is hereby, affirmed with costs; and that Sumner Wallace and the Union National Bank of Omaha, Nebraska, have and recover against Charles C. George, Henry F. Wyman, Albert U. Wyman and Morris Levy the sum of twenty dollars for their costs herein and have execution therefor.

December 8, 1904.

(Petition of Henry F. Wyman *et al.* for Appeal in Cause No. 1954.)

And on the sixth day of February, A. D. 1905, the petition of Henry F. Wyman, *et al.*, for appeal was filed in the case of George, *et al.*, *vs.* Wallace, *et al.*, No. 1954, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

CHARLES C. GEORGE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL., Appellees.
} No. 1954. In Equity.

Petition for Allowance of Appeal.

To the honorable the judges of the circuit court of appeals:

Now come Henry F. Wyman and Morris Levy, appellants in the above entitled action and represent, and now comes each of said appellants and represents:

1. That heretofore, to-wit: on the 8th day of December, A. D. 1904, the circuit court of appeals aforesaid rendered a final decree in the above entitled cause, affirming the decree of the circuit court of the United States for the district of Nebraska, rendered on the 16th day of May, 1903, by which decree of the circuit court said appellant Henry F. Wyman was adjudged and decreed to pay to the appellee Sumner Wallace, the sum of $1354.89, and also to pay to the appellee, The Union National Bank, the sum of $4308.75, and said appellant Morris Levy was adjudged and decreed to pay to the appellee Sumner Wallace, the sum of $1163.00, and also to pay to the appellee The Union National Bank the sum of $3698.50; and that by said decree of said circuit court each of said appellants was adjudged and decreed to pay to said Sumner Wallace and to said Union National Bank respectively, interest at the rate of six per cent. per annum upon the several amounts adjudged to be due them from May 1, 1903.

2. That said suit was originally instituted in the said circuit court and the jurisdiction of said circuit court was invoked by the appel-

lee, Sumner Wallace as plaintiff in said suit on the ground of diverse citizenship, and also on the ground that the case was one arising under the laws of the United States and the jurisdiction of the circuit court was sustained by the circuit court of appeals on the ground that the suit was one arising under the laws of the United States.

3. That the decree of the circuit court on the merits was not one which the Supreme Court of the United States might have reviewed by direct appeal from, or writ of error to, the circuit court, nor is the case one in which, by the judiciary act of 1891, the decree of the circuit court of appeals is made final, but the appellant is by the said act entitled to an appeal by right to the Supreme Court of the United States.

4. That appellants aver, and each of them avers, that the decree of the United States circuit court of appeals affirming the decree of the circuit court aforesaid, is erroneous and prejudicial and conceiving themselves aggrieved by said decree do, and each of them does, hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment and specification of errors filed herewith, and pray, and each of them prays, that this appeal may be allowed and that a transcript of the record, proceedings and all papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated Jan'y 26th, 1905.

HENRY F. WYMAN,
MORRIS LEVY,
By HOWARD B. SMITH,
Their Solicitor.

(Endorsed:) No. 1954. In the United States circuit court of appeals, eighth circuit. Charles C. George, *et al.*, *vs.* Sumner Wallace, *et al.* Petition for allowance of appeal by Henry F. Wyman & Morris Levy. Filed Feb. 6, 1905, John D. Jordan, clerk. Howard B. Smith, sol'r for appellants.

(Assignment of Errors by Henry F. Wyman *et al.* in Cause No. 1954.)

And on the sixth day of February, A. D. 1905, an assignment of errors by Henry F. Wyman, *et al.*, was filed in the case of George, *et al.*, *vs.* Wallace, *et al.*, No. 1954, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

CHARLES C. GEORGE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL., Appellees.
No. 1954.

Assignment and Specification of Errors.

Now come Henry F. Wyman and Morris Levy, appellants in the above entitled action, and say, and each of them says, that the decree in said cause is erroneous and against the just rights of these appellants and each of them for the following reasons, to-wit:

1. That the circuit court of appeals erred in its decree in holding it was not essential to the maintenance of the suit in the court below (to-wit: in said circuit court for the district of Nebraska) that the complainant (Sumner Wallace) should have first reduced his demand to judgment.

2. That the circuit court of appeals erred in its decree affirming the decree and judgment of the circuit court for the district of Nebraska; that is to say, in holding that the suit is one to wind up the affairs of a national bank and a suit arising under the laws of the United States of which the circuit court had jurisdiction.

3. That the circuit court of appeals erred in its interpretation of the contract of December 21, 1895, between the American national bank and the Union national bank, and in holding the same to be merely a contract by which "the Union national bank assumed the payment of the liabilities of the American national to its depositors and on account of bills payable, and in return was to receive its cash, cash items and such bills receivable as the former was willing to accept at par and without recourse. The difference between the aggregate of the amounts so received and the gross amount of liabilities assumed was to be represented by three non-negotiable promissory notes of the American national, the payment of which was to be secured by a pledge of all of its remaining assets to Thomas L. Kimball as trustee," which erroneous interpretation was material to the final conclusion of the court.

4. That the circuit court of appeals erred in holding that the contract of December 21, 1895, between the American national bank and the Union national bank, had been ratified by the shareholders of the American national bank, and that the individual liability of shareholders under section 5151 of the Revised Statutes of the United States might, therefore be enforced.

5. That the circuit court of appeals erred in holding that the complainant, Sumner Wallace and Union national bank could go behind the contract of December 21, 1895, and that their claims were, in equity, for the "contracts, debts and engagements," of the American national bank, for which shareholders are made individually liable, under section 5151 of the Revised Statutes.

6. That the circuit court of appeals erred in holding that the computation of interest upon the claims of the creditors, upon which was based the decree of said circuit court, was not made the subject of an assignment of error and erred in refusing to consider the complaint of the appellants in that behalf.

Wherefore, these appellants pray, and each of them prays, that said decree be reversed and that they, and each of them, may have such other and further relief as they may be entitled to receive.

HENRY F. WYMAN,
MORRIS LEVY,
By HOWARD B. SMITH,
Their Solicitor.

(Endorsed:) No. 1954. In the United States circuit court of appeals eighth circuit. Charles C. George, *et al. vs.* Sumner Wallace, *et al.* Assignment and specification of errors by Henry F. Wyman and Morris Levy. Filed Feb. 6, 1905. John D. Jordan, clerk. Howard B. Smith, sol'r for appellants.

(Appeal Bond of Henry F. Wyman to Sumner Wallace *et al.* in Cause No. 1954.)

And on the sixth day of February, A. D. 1905, the appeal bond of Henry F. Wyman to Sumner Wallace, *et al.*, was filed in the case of George, *et al.*, *vs.* Wallace, *et al.*, No. 1954, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

CHARLES C. GEORGE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL., Appellees.
} No. 1954. Appeal Bond.

Know all men by these presents, that we, Henry F. Wyman, of the county of Douglas and State of Nebraska, as principal, and Randall K. Brown, of the county of Douglas and State of Nebraska, as surety, are jointly and severally held and firmly bound unto Sumner Wallace, his heirs, executors, administrators and assigns and unto the Union National Bank of Omaha, Nebraska, its successors and assigns, in the penal sum of three hundred dollars ($300.00) lawful money of the United States well and truly to be paid;

The condition of the foregoing obligation is such that;

Whereas, the above bounden Henry F. Wyman has appealed from the decree and judgment of the United States circuit court of appeals for the eighth judicial circuit in a certain cause therein pending, wherein the said Henry F. Wyman is appellant and Sumner Wallace and The Union National Bank are appellees, and

wherein the United States circuit court of appeals has affirmed a judgment against said Henry F. Wyman in favor of said Sumner Wallace and a judgment in favor of the said Union National Bank.

Now, therefore, if the said Henry F. Wyman, appellant in said cause, shall prosecute his said appeal to effect and answer and pay all costs if he fail to make good his plea, then this obligation to be null and void, but otherwise to remain in full force and virtue.

Witness our hands this 30th day of January, 1905.

HENRY F. WYMAN.
RANDALL K. BROWN.

In presence of
ADAM KUNDERT.

Approved this sixth day of February, 1905.

WALTER H. SANBORN,
Presiding Judge of the U. S. Circuit Court
of Appeals for the Eighth Circuit.

(Endorsed:) No. 1954. In the United States circuit court of appeals, eighth circuit. Charles C. George, *et al.*, appellants, *vs.* Sumner Wallace, *et al.* Appeal bond Henry F. Wyman to Sumner Wallace and Union National Bank. Filed Feb. 6, 1905, John D. Jordan, clerk.

(Justification of Surety on Appeal Bond of Henry F. Wyman to Sumner Wallace *et al.* in Cause No. 1954.)

And on the sixth day of February, A. D. 1905, the justification of surety on the appeal bond of Henry F. Wyman to Sumner Wallace, *et al.*, was filed in the case of George, *et al.*, *vs.* Wallace, *et al.*, No. 1954, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

CHARLES C. GEORGE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL., Appellees. } No. 1954.

Justification of Surety.

STATE OF NEBRASKA, }
County of Douglas, } ss:

Randall K. Brown, being first duly sworn, deposes and says that he is a proposed surety for Henry F. Wyman in the above entitled action; that he is a resident and freeholder of the county of Douglas in the State of Nebraska; that he has a freehold estate in lands

situate in said county of Douglas, State of Nebraska, of the value of $1000.00 over and above all liens and encumbrances thereon and exclusive of any homestead or other land exempt from execution; and that he is worth in personal property situate in said county the sum of $1000.00 over and above all his debts, liabilities and responsibilities, and exclusive of personal property exempt from execution; and that he is worth in other real and personal property situate in said State the sum of $1000.00 over and above all liens and encumbrances thereon and beyond all his debts and liabilities and exclusive of property exempt from execution.

RANDALL K. BROWN.

Subscribed in my presence and sworn to before me this 30th day of January, A. D. 1905.

[SEAL.] ADAM KUNDERT,
Notary Public.

My commission expires Mar. 13, 1909.

(Endorsed:) No. 1954. In the United States circuit court of appeals, eighth circuit. Charles C. George, *et al.*, appellants, vs. Sumner Wallace, *et al.* Justification of surety for Henry F. Wyman on bond to Sumner Wallace and Union National Bank. Filed Feb. 6, 1905, John D. Jordan, clerk.

(Supersedeas Bond of Morris Levy to Sumner Wallace in Cause No. 1954.)

And on the sixth day of February, A. D. 1905, a supersedeas bond of Morris Levy to Sumner Wallace was filed in the case of George, *et al.*, *vs.* Wallace, *et al.*, No. 1954, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

CHARLES C. GEORGE ET AL., Appellants, *vs.* SUMNER WALLACE ET AL., Appellees.	No. 1954. Supersedeas Bond.

Know all men by these presents, that we, Morris Levy, of the county of Douglas and State of Nebraska, as principal, and Herman Cohn, of the county of Douglas and State of Nebraska, as surety, are jointly and severally held and firmly bound unto Sumner Wallace of Omaha, Nebraska, his heirs, executors, administrators and assigns, in the penal sum of thirty-five hundred dollars ($3500.00) lawful money of the United States well and truly to be paid:

The condition of the foregoing obligation is such that:

Whereas, the above bounden Morris Levy has appealed from the decree and judgment of the United States circuit court of appeals for the eighth judicial circuit in a certain cause therein pending, wherein the said Morris Levy is appellant and Sumner Wallace and The Union National Bank are appellees, and wherein the United States circuit court of appeals has affirmed a judgment rendered against said Morris Levy in said cause for the sum of $1163.00 in favor of the said Sumner Wallace,

Now, therefore, if the said Morris Levy, appellant in said cause, shall prosecute his said appeal to effect and answer and pay all damages and costs if he fail to make good his plea, then this obligation to be null and void, but otherwise to remain in full force and virtue.

Witness our hands this 30th day of January, A. D. 1905.

MORRIS LEVY.
HERMAN COHN.

Approved this sixth day of February, 1905.

WALTER H. SANBORN,
Presiding Judge of the U. S. Circuit Court of
Appeals for the Eighth Circuit.

(Endorsed:) No. 1954. In the United States circuit court of appeals for the eighth circuit. Charles C. George, *et al.*, appellants, vs. Sumner Wallace, *et al.* Supersedeas bond Morris Levy to Sumner Wallace. Filed Feb. 6, 1905, John D. Jordan, clerk.

(Supersedeas Bond of Morris Levy to Union National Bank in Cause No. 1954.)

And on the sixth day of February, A. D. 1905, a supersedeas bond of Morris Levy to Union National Bank was filed in the case of George, *et al.*, *vs.* Wallace, *et al.*, No. 1954, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

CHARLES C. GEORGE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL., Appellees.
} No. 1954. Supersedeas Bond.

Know all men by these presents, that we, Morris Levy, of the county of Douglas and State of Nebraska, as principal, and Herman Cohn, of the county of Douglas and State of Nebraska, as surety, are jointly and severally held and firmly bound unto the Union National Bank of Omaha, Nebraska, its successors and assigns, in the penal sum of nine thousand dollars ($9000.00) lawful money of the United States well and truly to be paid;

The condition of the foregoing obligation is such that:

Whereas, the above bounden Morris Levy has appealed from the decree and judgment of the United States circuit court of appeals for the eighth judicial circuit in a certain cause therein pending, wherein the said Morris Levy is appellant and Sumner Wallace and The Union National Bank are appellees, and wherein the United States circuit court of appeals has affirmed a judgment rendered against said Morris Levy in said cause for the sum of $3698.50 in favor of the said Union National Bank,

Now, therefore, if the said Morris Levy, appellant in said cause, shall prosecute his appeal to effect and answer and pay all damages and costs if he fail to make good his plea, then this obligation to be null and void, but otherwise to remain in full force and virtue.

Witness our hands this 30th day of January, A. D. 1905.

MORRIS LEVY,
HERMAN COHN.

Approved this sixth day of February, 1905.

WALTER H. SANBORN,
Presiding Judge of the U. S. Circuit Court of Appeals for the Eighth Circuit.

(Endorsed:) No. 1954. In the United States circuit court of appeals for the eighth circuit. Charles C. George, *et al.*, appellants, *vs.* Sumner Wallace, *et al.* Supersedeas bond. Morris Levy to Union National Bank. Filed Feb. 6, 1905. John D. Jordan, clerk.

(Order Allowing Appeal of Henry F. Wyman and Morris Levy in Cause No. 1954.)

And on the sixth day of February, A. D. 1905, in the record of the proceedings of said circuit court of appeals is an order allowing appeal of Henry F. Wyman and Morris Levy in the case of George, *et al. vs.* Wallace *et al.*, No. 1954, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1904.

MONDAY, February 6, 1905.

CHARLES C. GEORGE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL. } No. 1954.

Appeal from the Circuit Court of the United States for the District of Nebraska.

Upon consideration of the petition of Henry F. Wyman and Morris Levy for the allowance of an appeal herein, it is now here or-

dered by this court, that an appeal to the Supreme Court of the United States, be, and the same is hereby, allowed to the said Henry F. Wyman and Morris Levy, and each of them, from the decree of this court, entered on the 8th day of December, A. D. 1904; and that the bonds filed by said appellants respectively to Sumner Wallace and the Union National Bank of Omaha, Nebraska, be, and the same are each hereby, approved.

February 6, 1905.

(Citation on Appeal in Cause No. 1954.)

And on the thirteenth day of February, A. D. 1905, the citation on appeal of Henry F. Wyman and Morris Levy was filed in the case of George, *et al. vs.* Wallace, *et al.*, No. 1954, the original of which, with the marshal's return endorsed thereon, is hereto attached and herewith returned.

THE UNITED STATES OF AMERICA:

To Sumner Wallace and the Union National Bank of Omaha, Nebraska, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the city of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the U. S. circuit court of appeals for the eighth circuit wherein Henry F. Wyman and Morris Levy, are appellants, and you are appellees, to show cause if any there be, why the decree rendered against the said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Walter H. Sanborn, presiding judge of the U. S. circuit court of appeals for the eighth circuit this sixth day of February in the year of our Lord one thousand nine hundred and five.

WALTER H. SANBORN,
Presiding Judge of the U. S. Circuit Court of
Appeals for the Eighth Circuit.

[Endorsed:] Howard B. Smith. # 2257 No. — United States Supreme Court, Henry F. Wyman and Morris Levy, appellants *vs.* Sumner Wallace, *et al.* Citation on appeal. Filed Feb. 13 1905 John D. Jordan, clerk. Rec'd at marshal's office 2/9 1905 Handed deputy 2/9 1905

Marshal's Costs.

Service	$ .50
Mileage	
Expense	
Total	$ .50

Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, District of Nebraska, } ss:

I hereby certify and return that I served the annexed citation on the therein named R. S. Hall, att'y for appellees by handing to and leaving a true and correct copy thereof with him personally at Omaha in said district on the 9 day of February, A. D. 1905.

T. L. MATHEWS,
U. S. Marshal,
By H. A. HOMAN, Deputy.

(Decree in Cause No. 1955.)

And on the eighth day of December, A. D. 1904, in the record of the proceedings of said circuit court of appeals is a decree in the case of Brownlee, *et al.*, *vs.* Wallace, *et al.*, No. 1955, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1904.

THURSDAY, December 8, 1904.

ELMER C. BROWNLEE, PETER FRENZER, JOHN N. FRENZER, Howard B. Smith, and George G. Wallace, Appellants,
vs.
SUMNER WALLACE and UNION NATIONAL BANK OF Omaha, Nebraska. } No. 1955.

Appeal from the Circuit Court of the United States for the District of Nebraska.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Nebraska, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court, in this cause, be, and the same is hereby, affirmed with costs; and that Sumner Wallace and the Union National Bank of Omaha, Nebraska, have and recover against Elmer C. Brownlee, Peter Frenzer, John N. Frenzer, Howard B. Smith and George G. Wallace the sum of twenty dollars for their costs herein and have execution therefor.

December 8, 1904.

(Petition for Allowance of Appeal by Peter Frenzer *et al.* in Cause No. 1955.)

And on the sixth day of February, A. D. 1905, a petition for allowance of an appeal was filed in the case of Brownlee, *et al.*, *vs.* Wallace, *et al.*, No. 1955, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

ELMER C. BROWNLEE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL., Appellees.
} No. 1955. In Equity.

Petition for Allowance of Appeal.

To the honorable the judges of the circuit court of appeals:

Now come Peter Frenzer, Howard B. Smith and George G. Wallace, appellants in the above entitled action and represent, and now comes each of said appellants and represents:

1. That heretofore, to wit: on the 8th day of December, A. D. 1904, the circuit court of appeals aforesaid rendered a final decree in the above entitled cause, affirming the decree of the circuit court of the United States for the district of Nebraska, rendered on the 16th day of May, 1903, by which decree of the circuit court said appellant Peter Frenzer was adjudged and decreed to pay to the appellee Sumner Wallace, the sum of $348.90 and also to pay to the appellee, The Union National Bank, the sum of $1109.55, and said appellant Howard B. Smith was adjudged and decreed to pay to the appellee Sumner Wallace, the sum of $1163.00, and also to pay to the appellee The Union National Bank the sum of $3698.50; and said appellant George G. Wallace was adjudged and decreed to pay to the appellee Sumner Wallace the sum of $1744.50, and also to pay the appellee The Union National Bank the sum of $5547.75; and that by said decree of said circuit court each of said appellants was adjudged and decreed to pay to said Sumner Wallace and to said Union national bank respectively, interest at the rate of six per cent. per annum upon the several amounts adjudged to be due them from May 1, 1903.

2. That said suit was originally instituted in the said circuit court and the jurisdiction of said circuit court was invoked by the appellee Sumner Wallace as plaintiff in said suit on the ground of diverse citizenship, and also on the ground that the case was one arising under the laws of the United States and the jurisdiction of the circuit court was sustained by the circuit court of appeals on the ground that the suit was one arising under the laws of the United States.

3. That the decree of the circuit court on the merits was not one which the Supreme Court of the United States might have reviewed by direct appeal from, or writ of error to, the circuit court, nor is the case one in which, by the judiciary act of 1891, the decree of the circuit court of appeals is made final, but the appellant is by the said act entitled to an appeal by right to the Supreme Court of the United States.

4. That appellants aver, and each of them avers, that the decree of the United States circuit court of appeals affirming the decree of the circuit court aforesaid, is erroneous and prejudicial and conceiving themselves aggrieved by said decree do, and each of them does, hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment and specification of errors filed herewith, and pray, and each of them prays, that this appeal may be allowed and that a transcript of the record, proceedings and all papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

PETER FRENZER,
HOWARD B. SMITH,
GEORGE G. WALLACE,
By HOWARD B. SMITH,
Their Solicitor.

Dated Jan'y 26th, 1905.

(Endorsed :) No. 1955. In the United States circuit court of appeals, eighth circuit. Elmer C. Brownlee, *et al.*, appellants, *vs.* Sumner Wallace, *et al.* Petition for allowance of appeal by Peter Frenzer, *et al.* Filed Feb. 6, 1905, John D. Jordan, clerk. Howard B. Smith, sol'r for appellants.

(Assignment of Errors by Peter Frenzer *et al.* in Cause No. 1955.)

And on the sixth day of February, A. D. 1905, an assignment of errors was filed in the case of Brownlee, *et al.*, *vs.* Wallace, *et al.*, No. 1955, in the words and figures following, to-wit :—

In the United States Circuit Court of Appeals, Eighth Circuit.

ELMER C. BROWNLEE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL., Appellees.
} No. 1955.

Assignment and Specification of Errors.

Now come Peter Frenzer, Howard B. Smith, and George G. Wallace, appellants in the above entitled action, and say, and each of them says, that the decree in said cause is erroneous and against the

just rights of these appellants and each of them for the following reasons, to-wit:

1. That the circuit court of appeals erred in its decree in holding it was not essential to the maintenance of the suit in the court below (to-wit: in said circuit court for the district of Nebraska) that the complainant (Sumner Wallace) should have first reduced his demand to judgment.

2. That the circuit court of appeals erred in its decree affirming the decree and judgment of the circuit court for the district of Nebraska; that is to say, in holding that the suit is one to wind up the affairs of a national bank and a suit arising under the laws of the United States of which the circuit court had jurisdiction.

3. That the circuit court of appeals erred in its interpretation of the contract of December 21, 1895, between the American national bank and the Union national bank, and in holding the same to be merely a contract for which "The Union national bank assumed the payment of the liabilities of the American national to its depositors and on account of bills payable, and in return was to receive its cash, cash items and such bills receivable as the former was willing to accept at par and without recourse. The difference between the aggregate of the amounts so received and the gross amount of liabilities assumed was to be represented by three non-negotiable promissory notes of the American national, the payment of which was to be secured by a pledge of all of its remaining assets to Thomas L. Kimball as trustee," which erroneous interpretation was material to the final conclusion of the court.

4. That the circuit court of appeals erred in holding that the contract of December 21, 1895, between the American national bank and the Union national bank, had been ratified by the shareholders of the American national bank, and that the individual liability of shareholders under section 5151 of the Revised Statutes of the United States might, therefore be enforced.

5. That the circuit court of appeals erred in holding that the complainant, Sumner Wallace and Union national bank could go behind the contract of December 21, 1895, and that their claims were, in equity, for the "contracts, debts and engagements" of the American national bank, for which shareholders are made individually liable, under section 5151 of the Revised Statutes.

6. That the circuit court of appeals erred in holding that the computation of interest upon the claims of the creditors, upon which was based the decree of said circuit court, was not made the subject of an assignment of error and erred in refusing to consider the complaint of the appellants in that behalf.

Wherefore, these appellants pray, and each of them prays, that said decree be reversed and that they, and each of them, may have such other and further relief as they may be entitled to receive.

PETER FRENZER,
HOWARD B. SMITH,
GEORGE G. WALLACE,
By HOWARD B. SMITH,
Their Solicitor.

(Endorsed:) No. 1955. In the United States circuit court of appeals eighth circuit. Elmer C. Brownlee, *et al.*, appellants, *vs.* Sumner Wallace, *et al.* Assignment and specification of errors by Peter Frenzer, *et al.* Filed Feb. 6, 1905, John D. Jordan, clerk. Howard B. Smith, sol'r for appellants.

(Supersedeas Bond of Peter Frenzer to Sumner Wallace in Cause No. 1955.)

And on the sixth day of February, A. D. 1905, a supersedeas bond of Peter Frenzer to Sumner Wallace was filed in the case of Brownlee, *et al.*, *vs.* Wallace, *et al.*, No. 1955, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

ELMER *E.* BROWNLEE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL., Appellees.
} No. 1955. Supersedeas Bond.

Know all men by these presents, that we, Peter Frenzer, of the county of Douglas and State of Nebraska, as principal, and Joseph P. Frenzer of the county of Douglas and State of Nebraska, as surety, are jointly and severally held and firmly bound unto Sumner Wallace, his heirs, executors, administrators and assigns, in the penal sum of one thousand dollars ($1000.00) lawful money of the United States well and truly to be paid:

The condition of the foregoing obligation is such that:

Whereas, the above bounden Peter Frenzer has appealed from the decree and judgment of the United States circuit court of appeals for the eighth judicial circuit in a certain cause therein pending, wherein the said Peter Frenzer is appellant and Sumner Wallace and The Union National Bank are appellees, and wherein the United States circuit court of appeals has affirmed a judgment rendered against said Peter Frenzer in said cause for the sum of $348.90 in favor of the said Sumner Wallace.

Now, therefore, if the said Peter Frenzer, appellant in said cause, shall prosecute his said appeal to effect and answer and pay all damages and costs if he fail to make good his plea, then this obligation to be null and void, but otherwise to remain in full force and virtue.

Witness our hands this 31st day of January, A. D. 1905.

PETER FRENZER.
JOS. P. FRENZER.

In presence of
JOHN N. FRENZER.

Approved this sixth day of February, 1905.

WALTER H. SANBORN, Judge.

(Endorsed:) No. 1955. In the United States circuit court of appeals for the eighth circuit. Elmer *E.* Brownlee, *et al.*, appellants, *vs.* Sumner Wallace, *et al.* Supersedeas bond. Peter Frenzer to Sumner Wallace. Filed Feb. 6, 1905, John D. Jordan, clerk.

(Supersedeas Bond of Peter Frenzer to Union National Bank in Cause No. 1955.)

And on the sixth day of February, A. D. 1905, a supersedeas bond of Peter Frenzer to the Union national bank was filed in the case of Brownlee, *et al. vs.* Wallace, *et al.*, No. 1955, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

ELMER C. BROWNLEE ET AL., Appellants, *vs.* SUMNER WALLACE ET AL., Appellees. } No. 1955. Supersedeas Bond.

Know all men by these presents, that we, Peter Frenzer, of the county of Douglas and State of Nebraska, as principal, and Joseph P. Frenzer of the county of Douglas and State of Nebraska, as surety, are jointly and severally held and firmly bound unto The Union National Bank of Omaha, Nebraska, its successors and assigns, in the penal sum of three thousand dollars ($3000.00) lawful money of the United States well and truly to be paid;

The condition of the foregoing obligation is such that:

Whereas, the above bounded Peter Frenzer has appealed from the decree and judgment of the United States circuit court of appeals for the eighth judicial circuit in a certain cause therein pending, wherein the said Peter Frenzer is appellant and Sumner Wallace and The Union National Bank are appellees, and wherein the United States circuit court of appeals has affirmed a judgment rendered against said Peter Frenzer in said cause for the sum of $1109.55 in favor of the said Union national bank.

Now, therefore, if the said Peter Frenzer appel-ant in said cause, shall prosecute his said appeal to effect and answer and pay all damages and costs if he fail to make good his plea, then this obligation to be null and void, but otherwise to remain in full force and virtue.

Witness our hands this 31st day of January, A. D. 1905.

PETER FRENZER.
JOS. P. FRENZER.

In presence of
JOHN N. FRENZER.

Approved this sixth day of February, 1905.

WALTER H. SANBORN, Judge.

(Endorsed:) No. 1955. In the United States circuit court of appeals for the eighth circuit. Elmer C. Brownlee, *et al.*, appellants, *vs.* Sumner Wallace, *et al.* Supersedeas bond. Peter Frenzer to Union national bank. Filed Feb. 6, 1905, John D. Jordan, clerk.

(Justification of Surety on Bonds of Peter Frenzer to Sumner Wallace and Union National Bank in Cause No. 1955.)

And on the sixth day of February, A. D. 1905, the justification of surety on the bonds of Peter Frenzer to Sumner Wallace and Union national bank was filed in the case of Brownlee, *et al.*, *vs.* Wallace, *et al.*, No. 1955, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

ELMER C. BROWNLEE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL., Appellees. } No. 1955.

Justification of Surety.

STATE OF NEBRASKA,
County of Douglas, } *ss.*:

Joseph P. Frenzer, being first duly sworn, deposes and says that he is a proposed surety for Peter Frenzer in the above entitled action; that he is a resident and freeholder of the county of Douglas in the State of Nebraska; that he has a freehold estate in lands situate in said county of Douglas, State of Nebraska, of the value of $400.00 over and above all liens and encumbrances thereon and exclusive of any homestead or other land exempt from execution; and that he is worth in personal property situate in said county the sum of $20000.00 over and above all his debts, liabilities and responsibilities, and exclusive of personal property exempt from execution; and that he is worth in other real and personal property situate in said State the sum $— over and above all liens and encumbrances thereon and beyond all his debts and liabilities and exclusive of property exempt from execution.

JOS. P. FRENZER.

Subscribed in my presence and sworn to before me this 31st day of January, A. D. 1905.

[SEAL.] FRANK FRAZIER,
Notary Public.

My commission expires Nov. 23, 1909.

(Endorsed:) No. 1955. In the United States circuit court of appeals, eighth circuit. Elmer C. Brownlee, *et al.*, *vs.* Sumner Wallace, *et al.* Justification of surety for Peter Frenzer on bonds to Sumner Wallace and Union National Bank, etc. Filed Feb. 6, 1905, John D. Jordan, clerk.

(Appeal Bond of George G. Wallace to Sumner Wallace and Union National Bank in Cause No. 1955.)

And on the sixth day of February, A. D. 1905, the appeal bond of George G. Wallace to Sumner Wallace and Union National Bank was filed in the case of Brownlee, *et al.*, *vs.* Wallace, *et al.*, No. 1955, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

ELMER C. BROWNLEE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL., Appellees.
} No. 1955. Appeal Bond.

Know all men by these presents, that we, George G. Wallace, of the county of Douglas and State of Nebraska, as principal, and E. R. Hume of the county of Douglas and State of Nebraska, as surety, are jointly and severally held and firmly bound unto Sumner Wallace, his heirs, executors, administrators and assigns, and unto the Union National Bank of Omaha, Nebraska, its successors and assigns, in the penal sum of three hundred dollars ($300.00) lawful money of the United States well and truly to be paid;

The condition of the foregoing obligation is such that;

Whereas, the above bounden George G. Wallace has appealed from the decree and judgment of the United States circuit court of appeals for the eighth judicial circuit in a certain cause therein pending, wherein the said George G. Wallace is appellant and Sumner Wallace and The Union National Bank are appellees, and wherein the United States circuit court of appeals has affirmed a judgment against said George G. Wallace in favor of said Sumner Wallace and a judgment in favor of the said Union National Bank.

Now, therefore, if the said George G. Wallace, appellant in said cause, shall prosecute his said appeal to effect and answer and pay all costs if he fail to make good his plea, then this obligation to be null and void, but otherwise to remain in full force and virtue.

Witness our hands this 31st day of January, 1905.

GEORGE G. WALLACE.
E. R. HUME.

In presence of
DEXTER L. THOMAS.

Approved this sixth day of February, 1905.
WALTER H. SANBORN, Judge.

(Endorsed:) No. 1955. In the United States circuit court of appeals, eighth circuit. Elmer C. Brownlee, *et al.*, appellants, *vs.* Sumner Wallace, *et al.* Appeal bond. George G. Wallace to Sumner Wallace and Union National Bank, etc. Filed Feb. 6, 1905, John D. Jordan, clerk.

(Justification of Surety on Bond of George G. Wallace to Sumner Wallace *et al.* in Cause No. 1955.)

And on the sixth day of February, A. D. 1905, a justification of surety on the bond of George G. Wallace to Sumner Wallace, *et al.*, was filed in the case of Brownlee, *et al.*, *vs.* Wallace, *et al.*, No. 1955, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

ELMER C. BROWNLEE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL., Appellees. } No. 1955.

Justification of Surety.

STATE OF NEBRASKA, }
County of Douglas, } *ss:*

E. R. Hume, being first duly sworn, deposes and says that he is a proposed surety for George G. Wallace in the above entitled action; that he is a resident and freeholder of the county of Douglas in the State of Nebraska; that he has a freehold estate in lands situate in said county of Douglas, State of Nebraska, of the value of $2000.00 over and above all liens and encumbrances thereon and exclusive of any homestead or other land exempt from execution; and that he is worth in personal property situate in said county the sum of $— over and above all his debts, liabilities and responsibilities, and exclusive of personal property exempt from execution; and that he is worth in other real and personal property situate in said State the sum of $— over and above all liens and encumbrances thereon and beyond all his debts and liabilities and exclusive of property exempt from execution.

E. R. HUME.

Subscribed in my presence and sworn to before me this 31st day of January, A. D. 1905.

[SEAL.] DEXTER L. THOMAS,
Notary Public.

My commission expires July 27th, 1906.

(Endorsed:) No. 1955. In the United States circuit court of appeals, eighth circuit. Elmer C. Brownlee, *et al.*, appellants, *vs.* vs. Sumner Wallace, *et al.* Justification of surety for George G. Wallace on bond to Sumner Wallace and Union National Bank. Filed Feb. 6, 1905, John D. Jordan, clerk.

(Appeal Bond of Howard B. Smith in Cause No. 1955.)

And on the sixth day of February, A. D. 1905, an appeal bond of Howard B. Smith to Sumner Wallace, *et al.*, was filed in the case of Brownlee, *et al.*, *vs.* Wallace, *et al.*, No. 1955, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

ELMER C. BROWNLEE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL., Appellees.
} No. 1955. Appeal Bond.

Know all men by these presents, that we, Howard B. Smith, of the county of Douglas and State of Nebraska, as principal, and the Fidelity & Deposit Company of Maryland, as surety, are jointly and severally held and firmly bound unto Sumner Wallace, his heirs, executors, administrators and assigns, and unto the Union National Bank of Omaha, Nebraska, its successors and assigns, in the penal sum of three hundred dollars ($300.00) lawful money of the United States well and truly to be paid.

The condition of the foregoing obligation is such that;

Whereas, the above bounden Howard B. Smith, has appealed from the decree and judgment of the United States circuit court of appeals for the eighth judicial circuit in a certain cause therein pending, wherein the said Howard B. Smith is appellant and Sumner Wallace and The Union National Bank are appellees, and wherein the United States circuit court of appeals has affirmed a judgment against said Howard B. Smith in favor of said Sumner Wallace and a judgment in favor of the said Union National Bank,

Now, therefore, if the said Howard B. Smith, appellant in said cause, shall prosecute his said appeal to effect and answer and pay all costs if he fail to make good his plea, then this obligation to be null and void, but otherwise to remain in full force and virtue.

Witness our hands this 2nd day of February, 1905.

HOWARD B. SMITH.
FIDELITY AND DEPOSIT COMPANY
[SEAL.] OF MARYLAND,
By JOHN L. KENNEDY, Attorney in Fact.

In presence of—
V. E. REDFIELD.

Attest:
HARRY S. BYRNE,
Special Agent.

Approved this sixth day of February, 1905.
WALTER H. SANBORN, Judge.

(Endorsed:) No. 1955. U. S. circuit court of appeals, eighth circuit. Elmer C. Brownlee *et al.*, appellants, *vs.* Sumner Wallace *et al.*, appellees. Appeal bond Howard B. Smith to Sumner Wallace and Union National Bank, etc. Filed Feb. 6, 1905. John D. Jordan, clerk.

(Order Allowing Appeal in Cause No. 1955.)

And on the sixth day of February, A. D. 1905, in the record of the proceedings of said circuit court of appeals is an order allowing an appeal to Peter Frenzer, *et al.*, in the case of Brownlee, *et al.*, *vs.* Wallace, *et al.*, No. 1955, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1904.

MONDAY, February 6, 1905.

ELMER C. BROWNLEE ET AL., Appellants,
vs.
SUMNER WALLACE ET AL. } No. 1955.

Appeal from the Circuit Court of the United States for the District of Nebraska.

Upon consideration of the petition of Peter Frenzer, Howard B. Smith and George G. Wallace, for the allowance of an appeal herein, it is now here ordered by this court, that an appeal to the Supreme Court of the United States be, and the same is hereby, allowed to the said Peter Frenzer, Howard B. Smith and George G. Wallace, and each of them, from the decree of this court, entered on the 8th day of December, A. D. 1904; and that the bonds filed by said appellants respectively to Sumner Wallace and the Union National Bank of Omaha, Nebraska, be, and the same are each hereby, approved.

February 6, 1905.

(Citation on Appeal in Cause No. 1955.)

And on the thirteenth day of February, A. D. 1905, a citation on the appeal of Peter Frenzer, *et al.*, was filed in the case of Brownlee, *et al.*, *vs.* Wallace, *et al.*, No. 1955, the original of which, with the marshal's return of service endorsed thereon, is hereto attached and herewith returned.

THE UNITED STATES OF AMERICA:

To Sumner Wallace and the Union National Bank of Omaha, Nebraska, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington,

D. C., thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the U. S. circuit court of appeals for the eighth circuit wherein Peter Frenzer, Howard B. Smith and George G. Wallace are appellants, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Walter H. Sanborn, presiding judge of the U. S. circuit court of appeals for the eighth circuit this sixth day of February in the year of our Lord one thousand nine hundred and five.

WALTER H. SANBORN,
Presiding Judge of the U. S. Circuit Court of
Appeals for the Eighth Circuit.

[Endorsed:] Howard B. Smith # 2258 No. — United States Supreme Court. Peter Frenzer, Howard B. Smith and George G. Wallace, appellants *vs.* Sumner Wallace, *et al.* Citation on appeal. Filed Feb. 13 1905 John D. Jordan clerk Rec'd at marshal's office 2/9 1905 Handed deputy 2/9 1905 Serve on R. S. Hall

Marshal's Costs.

Service	$ 50
Mileage	
Expense	
Total	$ 50

Form No. 282

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I hereby certify and return that I served the annexed citation on the therein-named R. S. Hall att'y for appellees by handing to and leaving a true and correct copy thereof with him personally at Omaha in said district on the 9 day of February, A. D. 1905.

T. L. MATHEWS,
U. S. Marshal,
By H. A. HOMAN, Deputy.

(Decree in Cause No. 1956.)

And on the eighth day of December, A. D. 1904, in the record of the proceedings of said circuit court of appeals is a decree in the case of Morsman *vs.* Wallace, *et al.*, No. 1956, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1904.

THURSDAY, December 8, 1904.

EDGAR M. MORSMAN, Appellant,
vs.
SUMNER WALLACE and UNION NATIONAL BANK OF Omaha, Nebraska. } No. 1956.

Appeal from the Circuit Court of the United States for the District of Nebraska.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Nebraska, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court, in this cause, be, and the same is hereby, affirmed with costs; and that Sumner Wallace and the Union National Bank of Omaha, Nebraska, have and recover against Edgar M. Morsman the sum of twenty dollars for their costs herein and have execution therefor.

December 8, 1904.

(Petition for Allowance of Appeal and Assignment of Errors in Cause No. 1956.)

And on the twenty-seventh day of January, A. D. 1905, a petition for allowance of an appeal and an assignment of errors was filed in the case of Morsman vs. Wallace, *et al.*, No. 1956, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

EDGAR M. MORSMAN, Appellant,
vs.
SUMNER WALLACE ET AL., Appellees. } No. 1956. In Equity.

Petition for Allowance of Appeal.

To the honorable the judges of the circuit court of appeals aforesaid:

The appellant, Edgar M. Morsman, represents:

That heretofore, to-wit: on the 8th day of December, A. D. 1904, the circuit court of appeals aforesaid rendered a final decree in the above entitled cause, affirming the decree of the circuit court of the United States for the district of Nebraska rendered on the 16th day

of May A. D. 1903, and by which decree of the circuit court appellant was adjudged and decreed to pay to the appellee Sumner Wallace, the sum of $1744.50 and also to pay to the appellee Union National Bank, the sum of $5547.75.

That said suit was originally instituted in the said circuit court, and the jurisdiction of said circuit court was invoked by the appellee, Sumner Wallace, as plaintiff in said suit, on the ground of diverse citizenship, and also on the ground that the case was one arising under the laws of the United States, and the jurisdiction of the circuit court was sustained by the circuit court of appeals on the ground that the suit was one arising under the laws of the United States.

That the decree of the circuit court on the merits was not one which the Supreme Court of the United States might have reviewed by direct appeal from, or writ of error to, the circuit court, nor is the case one in which, by the judiciary act of 1891, the decree of the circuit court of appeals is made final, but the appellant is by the said act entitled to an appeal, by right, to the Supreme Court of the United States.

Appellant avers that the decree of the United States circuit court of appeals, affirming the decree of the circuit court aforesaid is erroneous and prejudicial, that is to say:

Specification of Errors.

(1.) The circuit court of appeals erred in its decree affirming the decree and judgment of the circuit court for the district of Nebraska; that is to say, in holding that the suit is one to wind up the affairs of a national bank and a suit arising under the laws of the United States of which the circuit court had jurisdiction.

(2.) The circuit court of appeals erred in its interpretation of the contract of December 21, 1895, between the American national bank and the Union national bank and in holding the same to be merely a contract by which, "the Union national bank assumed the payment of the liabilities of the American national to its depositors and on account of bills payable, and in return was to receive its cash, cash items and such bills receivable as the former was willing to accept at par and without recourse. The difference between the aggregate of the amounts so received and the gross amount of liabilities assumed was to be represented by three non-negotiable promissory notes of the American national, the payment of which was to be secured by a pledge of all of its remaining assets to Thomas L. Kimball as trustee," which erroneous interpretation was material to the final conclusion of the court.

(3.) The circuit court of appeals erred in holding that the contract of December 21, 1895, between the American national bank and the Union national bank, had been ratified by the shareholders of the American national bank, and that the individual liability of shareholders under section 5151 of the Revised Statutes of the United States might, therefore, be enforced.

(4.) The circuit court of appeals erred in holding that the complainant-, Sumner Wallace and Union national bank could go behind the contract of December 21, 1895, and that their claims were, in equity, for the "contracts, debts and engagements" of the American national bank, for which shareholders are made individually liable, under section 5151 of the Revised Statutes.

Wherefore appellant prays the allowance of an appeal to operate as a supersedeas, the signing of citation and the approval of his supersedeas bonds herewith tendered, to the end that the said cause may be removed to the Supreme Court of the United States, and there be reviewed and reversed.

WESTEL W. MORSMAN,
Solicitor for Edgar M. Morsman.

(Endorsed): 1956. United States circuit court of appeals, eighth circuit. Edgar M. Morsman, appellant, *vs.* Sumner Wallace, *et al.*, appellees. Petition for allowance of appeal and assignment of errors. Filed Jan. 27, 1905, John D. Jordan, clerk.

(Supersedeas Bond to Sumner Wallace in Cause No. 1956.)

And on the twenty-seventh day of January, A. D. 1905, a supersedeas bond to Sumner Wallace was filed in the case of Morsman *vs.* Wallace, *et al.*, No. 1956, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Judicial Circuit.

EDGAR M. MORSMAN, Appellant,
vs.
SUMNER WALLACE ET AL., Appellees.
} No. 1956. Supersedeas Bond.

Know all men by these presents: That we, Edgar M. Morsman of the county of Douglas and State of Nebraska, as principal, and Casper E. Yost of the same county and State as surety, are jointly and severally held and firmly bound unto Sumner Wallace, his heirs and assigns in the penal sum of $3500.00, lawful money of the United States, well and truly to be paid.

The condition of the foregoing obligation is such that:

Whereas, the above bounden Edgar M Morsman, has appealed from the decree and judgment of the United States circuit court of appeals for the eighth judicial circuit in a certain cause therein pending wherein the said Edgar M. Morsman is appellant and Sumner Wallace and Union National Bank are appellees, and wherein decree and judgment was rendered against the said Edgar M. Morsman affirming the decree and judgment in said cause rendered by the

United States circuit court for the district of Nebraska, adjudging the said Edgar M. Morsman to pay to the said Sumner Wallace the sum of $1744.50.

Now therefore, if the said Edgar M. Morsman, appellant in said cause shall prosecute his said appeal to effect and answer and pay all damages and costs if he fail to make good his appeal, then this obligation to be null and void, otherwise in full force and virtue.

Witness our hands the 19th day of January, A. D. 1905.

EDGAR M. MORSMAN.
CASPER E. YOST.

If this bond was presented to me for approval I should consider surety sufficient & approve same.

W. H. MUNGER.

Approved January 27, 1905.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed): No. 1956. United States circuit court of appeals, eighth circuit. Edgar M. Morsman, appellant, *vs.* Sumner Wallace, *et al.*, appellees. Supersedeas bond to Sumner Wallace. Filed Jan. 27, 1905, John D. Jordan, clerk.

(Supersedeas Bond to Union National Bank in Cause No. 1956.)

And on the twenty-seventh day of January, A. D. 1905, a supersedeas bond to the Union national bank was filed in the case of Morsman *vs.* Wallace, *et al.*, No. 1956, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

EDGAR M. MORSMAN, Appellant,
vs.
SUMNER WALLACE ET AL., Appellees.
} No. 1956. Supersedeas Bond.

Know all men by these presents:

That we, Edgar M. Morsman, of the county of Douglas and State of Nebraska, as principal, and Casper E. Yost of the same county and State, as surety, are jointly and severally held and firmly bound unto Union National Bank, its successors and assigns, in the penal sum of ten thousand dollars, ($10,000.00) lawful money of the United States, well and truly to be paid.

The condition of the foregoing obligation is such that:

Whereas the above bounden Edgar M. Morsman has appealed from the decree and judgment of the United States circuit court of

appeals for the eighth judicial circuit, in a certain cause therein pending wherein the said Edgar M. Morsman is appellant and Sumner Wallace and Union National Bank are appellees, and wherein the United States circuit court of appeals has affirmed a judgment rendered against the said Edgar M. Morsman in said cause for the sum of $5547.75, in favor of the said Union National Bank of Omaha, Nebraska,

Now therefore, if the said Edgar M. Morsman, appellant in said cause, shall prosecute his said appeal to effect and answer and pay all damages and costs if he fail to make good his plea, then this obligation to be null and void, but otherwise in full force and virtue.

Witness our hands the 19th day of Jan'y A. D. 1905.

EDGAR M. MORSMAN.
CASPER E. YOST.

If this bond was presented to me for approval I should consider the surety good and approve same.

W. H. MUNGER.

Approved January 27, 1905.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) No. 1956. United States circuit court of appeals, eighth circuit. Edgar M. Morsman, appellant, *vs.* Sumner Wallace, *et al.*, appellees. Supersedeas bond to Union national bank. Filed Jan. 27, 1905, John D. Jordan, clerk.

(Order Allowing Appeal in Cause No. 1956.)

And on the twenty-seventh day of January, A. D. 1905, in the record of the proceedings of said circuit court of appeals is an order allowing an appeal to Edgar M. Morsman in the case of Morsman *vs.* Wallace, *et al.*, No. 1956, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1904.

FRIDAY, January 27, 1905.

EDGAR M. MORSMAN, Appellant,
vs.
SUMNER WALLACE ET AL., Appellees. } No. 1956.

Order Allowing Appeal.

Now on this 27th day of January A. D. 1905, on hearing the petition of Edgar M. Morsman, one of the appellants in the above entitled cause, the same being presented in open court, it is ordered that an appeal be and the same is hereby allowed to operate as a supersedeas upon security being given as required by law.

January 27, 1905.

(Citation in Cause No. 1956.)

And on the thirtieth day of January, A. D. 1905, a citation on the appeal of Edgar M. Morsman was filed in the case of Morsman *vs.* Wallace, *et al.*, No. 1956, the original of which, with the acknowledgment of service by counsel for appellees endorsed thereon, is hereto attached and herewith returned.

THE UNITED STATES OF AMERICA:

To Sumner Wallace and The Union National Bank of Omaha, Nebraska, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the city of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein Edgar M. Morsman is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said Edgar M. Morsman, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Walter H. Sanborn, presiding judge of the United States circuit court of appeals for the eighth circuit, this twenty-seventh day of January in the year of our Lord one thousand nine hundred and five.

WALTER H. SANBORN,
Presiding Judge of the United States
Court of Appeals for the Eighth Circuit.

(Endorsed:) No. — United States circuit court of appeals, eighth circuit. Edgar M. Morsman, appellant, *vs.* Sumner Wallace *et al.* Citation on appeal. Filed Jan. 30 1905 John D. Jordan, clerk.

Due and legal service of the foregoing citation is acknowledged this 28th day of January, A. D. 1905.

RICHARD L. HALL,
Counsel for Sumner Wallace and The Union
National Bank of Omaha, Nebraska.

(Decree in Cause No. 1957.)

And on the eighth day of December, A. D. 1904, in the record of the proceedings of said circuit court of appeals is a decree in the case of Poppleton *vs.* Wallace, *et al.*, No. 1957, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1904.

THURSDAY, December 8, 1904.

WILLIAM S. POPPLETON, Appellant,
vs.
SUMNER WALLACE and UNION NATIONAL BANK OF Omaha, Nebraska. } No. 1957.

Appeal from the Circuit Court of the United States for the District of Nebraska.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Nebraska, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court, in this cause, be, and the same is hereby, affirmed with costs; and that Sumner Wallace and The Union National Bank of Omaha, Nebraska, have and recover against William S. Poppleton the sum of twenty dollars for their costs herein and have execution therefor.

December 8, 1904.

(Petition for Allowance of Appeal in Cause No. 1957.)

And on the sixth day of February, A. D. 1905, a petition for the allowance of an appeal was filed in the case of Poppleton *vs.* Wallace, *et al.*, No. 1957, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

WILLIAM S. POPPLETON, Appellant,
vs.
SUMNER WALLACE ET AL., Appellees. } No. 1957.

Petition for Allowance of Appeal.

To the honorable the judges of the circuit court of appeals:

Now comes William S. Poppleton, appellant in the above entitled action and represents:

1st. That heretofore to-wit, on the 8th day of December A. D. 1904, the circuit court of appeals aforesaid, rendered a final decree in the above entitled cause affirming the decree of the circuit court of the United States for the district of Nebraska, rendered on the 16th day of May, 1903, by which decree of the circuit court, said

appellant William S. Poppleton, was adjudged and decreed to pay to the appellee Sumner Wallace, the sum of $1308.37 and also to the appellee Union National Bank, the sum of $4160.81; and that by said decree of said circuit court, each of said appellants was adjudged and decreed to pay said Sumner Wallace and said Union National Bank respectively, interest at the rate of 7 % per annum upon the several amounts adjudged to be due them from May 1st, 1903.

2nd. That said suit was originally instituted in the said circuit court and the jurisdiction of said circuit court was invoked by the appellee, Sumner Wallace as plaintiff in said suit on the ground of diverse citizenship, and also on the ground that the case was one arising under the laws of the United States and the jurisdiction of the circuit court was sustained by the circuit court of appeals on the ground that the suit was one arising under the laws of the United States.

3rd. That the decree of the circuit court on the merits was not one which the Supreme Court of the United States might have reviewed by direct appeal from, or writ of error to, the circuit court, nor is the case — in which, by the judiciary act of 1891, the decree of the circuit court of appeals is made final, but the appellant is by said act entitled to an appeal by right to the Supreme Court of the United States.

4th. Said appellant further avers that the decree of the United States circuit court of appeals, affirming the decree of the circuit court aforesaid, is erroneous and prejudicial and conceiving himself aggrieved by said decree, does hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment and specification of errors filed herewith and prays that this appeal may be allowed and that a transcript of the record, proceedings and all papers upon which said decree was made duly authenticated, may be sent to the Supreme Court of the United States.

Dated February 4th, 1905.

WILLIAM S. POPPLETON,
By RICHARD S. HORTON,
His Solicitor.

(Endorsed:) No. 1957. In the United States circuit court of appeals for the eighth circuit. William S. Poppleton, appellant, *vs.* Sumner Wallace, *et al.*, appellees. Petition for allowance of appeal. Filed Feb. 6, 1905, John D. Jordan, clerk. Richard S. Horton, attorney for appellant.

(Assignment of Errors in Cause No. 1957.)

And on the sixth day of February, A. D. 1905, an assignment of errors was filed in the case of Poppleton *vs.* Wallace, *et al.*, No. 1957, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

WILLIAM S. POPPLETON, Appellant,
vs.
SUMNER WALLACE ET AL., Appellees. } No. 1957.

Assignment and Specification of Errors.

Comes now William S. Poppleton, appellant in the above entitled action and states that the decree in said cause is erroneous and against the just rights of this appellant for the following reasons, to-wit:

1st. That the circuit court of appeals erred in its decree in holding it was not essential to the maintenance of the suit in the court below (to-wit in said circuit court for the district of Nebraska) that the complainant (Sumner Wallace) should have first reduced his demand to judgment.

2nd. That the circuit court of appeals erred in its decree affirming the decree and judgment of the circuit court for the district of Nebraska; that is to say, in holding that the suit is one to wind up the affairs of a national bank and a suit arising under the laws of the United States of which the circuit court had jurisdiction.

3rd. That the circuit court of appeals erred in its interpretation of the contract of December 21, 1895, between the American national bank and the Union national bank and in holding the same to be merely a contract by which "the Union national bank assumed the payment of the liabilities of the American national to its depositors and on account of bills payable, and in return was to receive its cash, cash items and such bills receivable as the former was willing to accept at par and without recourse. The difference between the aggregate of the amount received and the gross amount of liabilities assumed was to be represented by three non-negotiable promissory notes of the American national, the payment of which was to be secured by a pledge of all of its remaining assets to Thomas L. Kimball as trustee," which erroneous interpretation was material to the final conclusions of the court.

4th. That the circuit court of appeals erred in holding that the contract of December 21st, 1895, between the American national bank and the Union national bank had been ratified by the shareholders of the American national bank, and that the individual liability of shareholders under section 5151 of the Revised Statutes of the United States might, therefore be enforced.

5th. That the circuit court of appeals erred in holding that the complainants, Sumner Wallace and Union National Bank could go behind the contract of December 21, 1895, and that their claims were, in equity for the "contract-, debts and engagements" of the

American national bank, for which shareholders are made individually liable, under section 5151 of the Revised Statutes.

6th. That the circuit court of appeals erred in holding that said appellant had ratified the contract of December 21st, 1895.

7th. That said circuit court of appeals erred in holding that the other stockholders of the American national bank could ratify said contract of December 21st, 1895, on behalf of said appellant and in holding that said appellant was bound by the *ultra vires* acts of the directors of said American national bank by reason of the alleged conduct of and ratification by a majority of the other stockholders of said American national bank.

8th. That the circuit court of appeals erred in holding that the computation of interest upon the claims of the creditors upon which was based a decree of said circuit court, was not made subject of an assignment of error and erred in refusing to consider the complaint of appellant in that behalf.

Wherefore said appellant, William S. Poppleton, prays that said decree be reversed and that he may have such other and further relief as he may be entitled to receive.

WILLIAM S. POPPLETON,
By RICHARD S. HORTON,
His Solicitor.

(Endorsed:) No. 1957. In the United States circuit court of appeals for the eighth circuit. William S. Poppleton, appellant, *vs.* Sumner Wallace *et al.*, appellees. Assignment and specification of errors. Filed Feb. 6, 1905, John D. Jordan, clerk. Richard S. Horton, attorney for appellant.

(Supersedeas Bond to Sumner Wallace in Cause No. 1957.)

And on the sixth day of February, A. D. 1905, a supersedeas bond to Sumner Wallace was filed in the case of Poppleton *vs.* Wallace *et al.*, No. 1957, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit

WILLIAM S. POPPLETON, Appellant,
vs.
SUMNER WALLACE ET AL., Appellees.
} No. 1957. Supersedeas Bond.

Know all men by these presents, That we, William S. Poppleton as principal and American Surety Company of New York as surety, are jointly and severally held and firmly bound unto Sumner Wallace, his heirs, executors and administrators, in the penal sum of $4000.00 in lawful money of the United States well and truly to be paid.

The condition of the foregoing obligation is such that whereas the

above bounden William S. Poppleton has appealed from the decree and judgment of the United States circuit court of appeals for the eighth circuit, in a certain cause therein pending wherein said William S. Poppleton is appellant and Sumner Wallace and The Union National Bank are appellees and,

Whereas the United States circuit court of appeals has affirmed the judgment rendered against said William S. Poppleton in said cause in the sum of $1308.37 in favor of Sumner Wallace

Now therefore if the said William S. Poppleton, appellant in said cause, shall prosecute his said appeal to effect, and answer and pay all damages and costs if he fail to make good his plea, then this obligation to be null and void but otherwise in full force and virtue.

Witness our hands this 1st day of February, A. D. 1905.

WILLIAM S. POPPLETON.
[SEAL.] AMERICAN SURETY COMPANY OF NEW YORK,
By MATTHEW A. HALL,
Resident Vice-Pres't.
Attest: FREDERICK J. BURNETT,
Resident Ass't Sec'y.

Bond and surety approved this sixth day of February, 1905.
WALTER H. SANBORN,
Presiding Judge.

(Endorsed:) No. 1957. In the United States circuit court of appeals of the eighth circuit. William S. Poppleton, appellant, *vs.* Sumner Wallace, *et al.*, appellees. Supersedeas bond to Sumner Wallace. Filed Feb. 6, 1905. John D. Jordan, clerk. Richard S. Horton, attorney for appellant.

(Supersedeas Bond to Union National Bank in Cause No. 1957.)

And on the sixth day of February, A. D. 1905, a supersedeas bond to the Union National Bank was filed in the case of Poppleton *vs.* Wallace, *et al.*, No. 1957, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

WILLIAM S. POPPLETON, Appellant, *vs.* UNION NATIONAL BANK and SUMNER WALLACE, Appellees.	# 1957.	Supersedeas Bond.

Know all men by these presents: That we, William S. Poppleton as principal and the American Surety Company of New York as surety, are jointly and severally held and firmly bound unto the

Union National Bank, its successors and assigns, in the penal sum of $10,000.00, in lawful money of the United States well and truly to be paid.

The condition of the foregoing obligation is such that whereas the above bounden William S. Poppleton has appealed from the decree and judgment of the United States circuit court of appeals for the eighth circuit in a certain cause therein pending wherein said William S. Poppleton is appellant and Sumner Wallace and The Union National Bank are appellees and,

Whereas the United States circuit court of appeals has affirmed the judgment rendered against said William S. Poppleton in said cause in the sum of $4160.81 in favor of the Union National Bank.

Now therefore if the said William S. Poppleton, appellant in said cause shall prosecute his said appeal to effect, and answer and pay all damages and costs if he fail to make good his plea, then this obligation to be null and void, but otherwise to remain in full force and virtue.

Witness our hands this 1st day of February, A. D. 1905.

WILLIAM S. POPPLETON.

[SEAL.] AMERICAN SURETY COMPANY OF NEW YORK,

By MATTHEW A. HALL,
Resident Vice-Pres't.

Attest: FREDERICK J. BURNETT,
Resident Ass't Sec'y.

Bond and surety approved this sixth day of February, 1905.

WALTER H. SANBORN,
Presiding Judge of the U. S. Circuit Court of Appeals, Eighth Circuit.

(Endorsed:) No. 1957. In the United States circuit court of appeals of the eighth circuit. William S. Poppleton, appellant, *vs.* Union National Bank and Sumner Wallace, appellees. Supersedeas bond to Union National Bank. Filed Feb. 6, 1905, John D. Jordan, clerk. Richard S. Horton, attorney for appellant.

(Order Allowing Appeal in Cause No. 1957.)

And on the sixth day of February, A. D. 1905, in the record of the proceedings of said circuit court of appeals is an order allowing an appeal in the case of Poppleton *vs.* Wallace, *et al.*, No. 1957, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1904.

MONDAY, February 6, 1905.

WILLIAM S. POPPLETON, Appellant,
vs.
SUMNER WALLACE ET AL., Appellees. } No. 1957. Order.

At a stated term to-wit, the December term A. D. 1904, of the United States circuit court of appeals of the eighth circuit, held in the court room, of the city of St. Louis, State of Missouri, on the sixth day of February, 1905.

In open court on motion of Richard S. Horton, Esq., solicitor and of counsel for appellant, it is ordered that an appeal to the Supreme Court of the United States from the final decree heretofore filed and entered herein, be and the same is hereby allowed and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings herein be forthwith transmitted to the said Supreme Court of the United States. It is further ordered that said appellant furnish a bond of $10,000.00 to the appellee Union National Bank, and $4000.00 to appellee Sumner Wallace, said bonds to act as supersedeas bonds and also as bonds for costs and damages on appeal.

February 6, 1905.

(Citation on Appeal in Cause No. 1957.)

And on the twenty-fourth day of February, A. D. 1905, a citation on the appeal of William S. Poppleton was filed in the case of Poppleton *vs.* Wallace, *et al.*, No. 1957, the original of which, with the acceptance of service endorsed thereon, is hereto attached and herewith returned.

THE UNITED STATES OF AMERICA:

To Sumner Wallace and the Union National Bank of Omaha, Nebraska, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the U. S. circuit court of appeals for the eighth circuit wherein William S. Poppleton is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Walter H. Sanborn, presiding judge of the U. S. circuit court of appeals for the eighth circuit this sixth day of February in the year of our Lord one thousand nine hundred and five.

WALTER H. SANBORN,
Presiding Judge of the U. S. Circuit Court of
Appeals for the Eighth Circuit.

[Endorsed:] R. S. Horton. No. —. United States Supreme Court. William S. Poppleton appellant, *vs.* Sumner Wallace, *et al.* Citation on appeal. Filed Feb. 2 41905 John D. Jordan, clerk.

Service of the foregoing citation is hereby accepted.
SUMNER WALLACE,
By HALL & McCULLOUGH,
His Solicitors.
UNION NATIONAL BANK,
By HALL & McCULLOUGH,
Its Solicitors.

(Decree in Cause No. 1959.)

And on the eighth day of December, A. D. 1904, in the record of the proceedings of said circuit court of appeals is a decree in the case of McCague Investment Company, *et al.*, *vs.* Wallace, *et al.*, No. 1959, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1904.

THURSDAY, December 8, 1904.

THE McCAGUE INVESTMENT COMPANY, THOMAS H. McCague, Alex. G. Charlton, Anna C. Crowell, George W. McClellan, Executor of the Last Will and Testament of Robert H. McClellan, Deceased; Emily J. Robinson, John Speer, Robert L. Brownlee, Caroline Carpenter, George Marples, J. H. Hawkins, John L. McCague, and John L. McCague, Thomas H. McCague, William L. McCague, and Alex. G. Charlton, Partners under Firm Name and Style of McCague Brothers, and Rufus B. Bullock, Appellants,
vs.
SUMNER WALLACE and UNION NATIONAL BANK OF Omaha, Nebraska. } No. 1959.

Appeal from the Circuit Court of the United States for the District of Nebraska.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Nebraska, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court, in this cause, be, and the same is hereby, affirmed with costs; and that Sumner Wallace and the Union National Bank of Omaha, Nebraska, have and recover against The McCague Investment Company, Thomas H. McCague, Alex. G. Charlton, Anna C. Crowell, George W. McClellan, executor of the last will and testament of Robert H. McClellan, deceased, Emily J. Robinson, John Speer, Robert L. Brownlee, Caroline Carpenter, George Marples, J. H. Hawkins, John L. McCague, and John L. McCague, Thomas H. McCague, William L. McCague and Alex. G. Charlton, partners under the firm name and style of McCague Brothers, and Rufus B. Bullock, the sum of twenty dollars for their costs herein and have execution therefor.

December 8, 1904.

(Suggestion of Death and Stipulation for Order of Revivor as to J. H. Hawkins, Deceased, in Cause No. 1959.)

And on the sixth day of February, A. D. 1905, a suggestion of death and stipulation for order of revivor as to J. H. Hawkins, deceased, was filed in the case of McCague Investment Co., *et al.*, vs. Wallace, *et al.*, No. 1959, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

THE MCCAGUE INVESTMENT COMPANY *et al.*, Appellants, vs. SUMNER WALLACE ET AL., Appellees.	No. 1959.	Suggestion of Death.

Now come George S. Hawkins and John A. Kitchcart as executors of the last will and testament of J. H. Hawkins, deceased, and show to the court that the said J. H. Hawkins, one of the appellants in the above entitled cause, died on the 25th day of August, 1904, and that the said George S. Hawkins and John A. Kitchcart have been regularly and legally appointed as executors of the last will and testament of the said J. H. Hawkins, and have qualified and are acting as such executors.

The said George S. Hawkins and John A. Kitchcart as executors of the last will and testament of J. H. Hawkins, deceased, move the court for an order reviving this action in their names as such executors.

February 2, 1905.

CHARLES BATTELLE,

Solicitors for George S. Hawkins and John A. Kitchcart, as Executors of the Last Will and Testament of J. H. Hawkins, Deceased.

Now come Sumner Wallace and The Union National Bank of Omaha, Nebraska, appellees in the above entitled action and hereby consent, and each of them consents, that an order be entered reviving this action in the names of George S. Hawkins and John A. Kitchcart, as executors of the last will and testament of J. H. Hawkins, deceased.

SUMNER WALLACE.
UNION NATIONAL BANK,
By HALL & McCULLOCH,
Solicitors for said Appellees.

(Endorsed:) No. 1959. In the United States circuit court of appeals, eighth circuit. The McCague Investment Company, *et al.*, appellants, *vs.* Sumner Wallace, *et al.*, appellees. Suggestion of death and stipulation for order of revivor as to J. H. Hawkins, deceased. Filed Feb. 6, 1905, John D. Jordan, clerk. Chas. Battelle, Omaha, Neb., solicitor.

(Order Reviving Cause as to J. H. Hawkins, Deceased, in Case No. 1959.)

And on the sixth day of February, A. D. 1905, in the record of the proceedings of said circuit court of appeals is an order reviving cause as to J. H. Hawkins, deceased, in the case of McCague Investment Co., *et al.*, *vs.* Wallace, *et al.*, No. 1959, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1904.

MONDAY, February 6, 1905.

THE McCAGUE INVESTMENT COMPANY ET AL., Appellants, *vs.* SUMNER WALLACE ET AL., Appellees. } No. 1959. Order.

Now on this sixth day of February, 1905, this cause coming on to be heard upon the motion of George S. Hawkins and John A. Kitchcart as executors of the last will and testament of J. H. Hawkins, deceased, suggesting the death of the said J. H. Hawkins on the 25th day of August, 1904, and praying the court for an order reviving the said action in the names of said George S. Hawkins and John A. Kitchcart as executors of the estate of J. H. Hawkins, deceased, and it appearing that Sumner Wallace and The Union National Bank, appellees in said action have consented to the entry of such order, said motion is sustained.

It is therefore hereby ordered, adjudged and decreed that said

action be, and the same hereby is, revived in the names of George S. Hawkins and John A. Kitchcart as executors of the last will and testament of J. H. Hawkins, deceased.

February 6, 1905.

(Petition for Allowance of Appeal by George W. McClellan, as Executor, &c., *et al.* in Cause No. 1959.)

And on the sixth day of February, A. D. 1905, a petition for the allowance of an appeal by George W. McClellan, as executor, &c., *et al.*, was filed in the case of McCague Investment Co., *et al.*, *vs.* Wallace, *et al.*, No. 1959, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

THE MCCAGUE INVESTMENT COMPANY ET AL., Appellants, *vs.* SUMNER WALLACE ET AL., Appellees. } No. 1959. In Equity.

Petition for Allowance of Appeal.

To the honorable the judges of the circuit court of appeals:

Now come George W. McClellan as executor of the last will and testament of Robert H. McClellan, deceased, R. L. Brownlee, Caroline Carpenter, George Marples, and George S. Hawkins and John A. Kitchcart as executors of the last will and testament of J. H. Hawkins, deceased, appellants in the above entitled action and represent, and now comes each of said appellants and represents:

1. That heretofore, to-wit: on the 8th day of December A. D. 1904, the circuit court of appeals as aforesaid rendered a final decree in the above entitled cause, affirming the decree of the circuit court of the United — for the district of Nebraska, rendered on the 16th day of May, 1903, by which decree of the circuit court said appellant George W. McClellan as executor of the last will and testament of Robert H. McClellan, deceased, was adjudged and decreed to pay to the appellee Sumner Wallace, the sum of $1163.00 and also to pay to the appellee, The Union National Bank, the sum of $3698.50, and said appellant R. L. Brownlee was adjudged and decreed to pay to the appellee Sumner Wallace the sum of $581.50, and also to pay to the appellee The Union National Bank the sum of $1849.25; and said appellant Caroline Carpenter was adjudged and decreed to pay to the appellee Sumner Wallace the sum of $418.68, and also to pay to the appellee The Union National Bank the sum of $1331.46; and said appellant George Marples was adjudged and decreed to pay to the appellee Sumner Wallace the sum of $348.90, and also to pay to the appellee The Union National Bank, the sum of $1109.55; and said

appellant J. H. Hawkins who has since died *died* and said action having been revived in the name- of George S. Hawkins and John A. Kitchcart as executors of the last will and testament of the said J. H. Hawkins, deceased, was adjudged and decreed to pay to the appellee Sumner Wallace the sum of $581.50, and also to pay to the appellee The Union National Bank the sum of $1849.25; and that by said decree of said circuit court each of said appellants was adjudged and decreed to pay said Sumner Wallace and to said Union national bank respectively, interest at the rate of six per cent. per annum upon the several amounts adjudged to be due them from May 1, 1903.

2. That said suit was originally instituted in the said circuit court and the jurisdiction of said circuit court was invoked by the appellee Sumner Wallace as plaintiff in said suit on the ground of diverse citizenship, and also on the ground that the case was one arising under the laws of the United States and the jurisdiction of the circuit court was sustained by the circuit court of appeals on the ground that the suit was on- arising under the laws of the United States.

3. That the decree of the circuit court on the merits was not one which the Supreme Court of the United States might have reviewed by direct appeal from, or writ of error to, the circuit court, nor is the case one in which, by the judiciary act of 1891, the decree of the circuit court of appeals is made final, but the appellant is by the said act entitled to an appeal by right to the Supreme Court of the United States.

4. That appellants aver, and each of them avers, that the decree of the United States circuit court of appeals affirming the decree of the circuit court aforesaid, is erroneous and prejudicial and conceiving themselves aggrieved by said decree do, and each of them does, hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment and specifications of errors filed herewith, and pray, and each of them prays, that this appeal may be allowed and that a transcript of the record, proceedings and all papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated Feb'y 2, 1905.

GEORGE W. McCLELLAN,
As Executor of the Last Will and Testament of
Robert H. McClellan, Deceased,
R. L. BROWNLEE,
CAROLINE CARPENTER,
GEORGE MARPLES,
GEORGE S. HAWKINS AND
JOHN A. KITCHCART,
As Executors of the Last Will and Testament
of J. H. Hawkins, Deceased,
By CHAS. BATTELLE,
Their Solicitor.

(Endorsed:) No. 1959. In the United States circuit court of appeals, eighth circuit. The McCague Investment Co., *et al.*, appellants, *vs.* Sumner Wallace, *et al.*, appellees. Petition for allowance of an appeal by George W. McClellan, as executor &c., *et al.* Filed Feb. 6, 1905. John D. Jordan, clerk. Charles Battelle, Omaha, Nebraska, solicitor.

(Assignment of Errors by George W. McClellan, as Executor, &c., *et al.* in Cause No. 1959.)

And on the sixth day of February, A. D. 1905, an assignment of errors by George W. McClellan, as executor &c., *et al.*, was filed in the case of McCague Investment Co., *et al.*, *vs.* Wallace, *et al.*, No. 1959, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals, Eighth Circuit.

THE MCCAGUE INVESTMENT COMPANY ET AL., Appellants, *vs.* SUMNER WALLACE ET AL., Appellees. } No. 1959.

Assignment and Specification of Errors.

Now come George W. McClellan as executor of the last will and testament of Robert H. McClellan, deceased, R. L. Brownlee, Caroline Carpenter, George Marples, and George S. Hawkins and John A. Kitchcart as executors of the last will and testament of J. H. Hawkins, deceased, appellants in the above entitled action, and say, and each of them says, that the decree in said cause is erroneous and against the just rights of these appellants and each of them for the following reasons, to-wit:

1. That the circuit court of appeals erred in its decree in holding it was not essential to the maintenance of the suit in the court below (to-wit: in said circuit court for the district of Nebraska) that the complainant (Sumner Wallace) should have first reduced his demand to judgment.

2. That the circuit court of appeals erred in its decree affirming the decree and judgment of the circuit court for the district of Nebraska; that is to say, in holding that the suit is one to wind up the affairs of a national bank and a suit arising under the laws of the United States of which the circuit court had jurisdiction.

3. That the circuit court of appeals erred in its interpretation of the contract of December 21, 1895, between the American national bank and the Union national bank, and in holding the same to be merely a contract by which "The Union national bank assumed the payment of the liabilities of the American national to its depositors

and on account of bills payable, and in return to receive its cash, cash items and such bills receivable as the former was willing to accept at par and without recourse. The difference between the aggregate of the amounts so received and the gross amount of liabilities assumed was to be represented by three non-negotiable promissory notes of the American national, the payment of which was to be secured by a pledge of all its remaining assets to Thomas L. Kimball as trustee," which erroneous interpretation was material to the final conclusion of the court.

4. That the circuit court of appeals erred in holding that the contract of December 21, 1895, between the American national bank and the Union national bank, had been ratified by the shareholders of the American national bank, and that the individual liability of the shareholders under section 5151 of the Revised Statutes of the United States might, therefore be enforced.

5. That the circuit court of appeals erred in holding that the complainant-, Sumner Wallace and Union National Bank could go behind the contract of December 21, 1895, and that their claims were, in equity, for the "contracts, debts and engagements" of the American national bank, for which shareholders are made individually liable, under section 5151 of the Revised Statutes.

6. That the circuit court of appeals erred in holding that the computation of interest upon the claims of the creditors, upon which was based the decree of said circuit court, was not made the subject of an assignment of error and erred in refusing to consider the complaint of the appellants in that behalf.

Wherefore, these appellants pray, and each of them prays, that said decree be reversed and that they, and each of them, may have such other and further relief as they may be entitled to receive.

GEORGE W. McCLELLAN,
As Executor of the Last Will and Testament
of Robert H. McClellan, Deceased,
R. L. BROWNLEE,
CAROLINE CARPENTER,
GEORGE MARPLES,
GEORGE S. HAWKINS AND
JOHN A. KITCHCART,
As Executors of the Last Will and Testament
of J. H. Hawkins, Deceased,
By CHAS. BATTELLE, Their Solicitor.

(Endorsed:) No. 1959. In the United States circuit court of appeals, 8th circuit. The McCague Investment Company, *et al.*, appellants, *vs.* Sumner Wallace, *et al.*, appellees. Assignment and specification of errors by George W. McClellan, as executor, &c., *et al.* Filed Feb. 6, 1905, John D. Jordan, clerk. Chas. Battelle, Omaha, Nebraska, solicitor.

(Appeal Bond of George W. McClellan, as Executor, &c., *et al.* in Cause No. 1959.)

And on the sixth day of February, A. D., 1905, a bond on the appeal of George W. McClellan, as executor &c., *et al.*, was filed in the case of McCague Investment Co., *et al.*, *vs.* Wallace, *et al.*, No. 1959, in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

THE McCAGUE INVESTMENT CO. ET AL., Appellants, *vs.* SUMNER WALLACE ET AL., Appellees. } No. 1959. Cost Bond.

Know all men by these presents, that we, George W. McClellan as executor of the last will and testament of Robert H. McClellan, deceased, R. L. Brownlee, Caroline Carpenter, George Marples, and George S. Hawkins and John A. Kitchcart as executors of the last will and testament of J. H. Hawkins, deceased, as principal, are each held and firmly bound unto Sumner Wallace, his heirs, executors, administrators or assigns, and to The Union National Bank of Omaha, Nebraska, its successors and assigns, and to each of them, and we The United States Fidelity and Guaranty Company as surety are held and firmly bound unto Sumner Wallace, his heirs, executors, administrators or assigns, and to the Union National Bank of Omaha, Nebraska, its successors and assigns, and to each of them, for each of the above named principals in the penal sum of three hundred (300) dollars lawful money of the United States, well and truly to be paid:

The condition of the foregoing obligation is such that:

Whereas, the above bounden George W. McClellan as executor of the last will and testament of Robert H. McClellan, deceased, R. L. Brownlee, Caroline Carpenter, George Marples, and George S. Hawkins and John A. Kitchcart as executors of the last will and testament of J. H. Hawkins, deceased, and each of them, has appealed from a decree and judgment of the United States circuit court of appeals for the eighth judicial circuit in a certain cause therein pending, wherein the said George W. McClellan as executor of the last will and testament of Robert H. McClellan, deceased, R. L. Brownlee, Caroline Carpenter, George Marples, and George S. Hawkins and John A. Kitchcart as executors of the last will and testament of J. H. Hawkins, deceased, are appellants, and Sumner Wallace and The Union National Bank of Omaha, Nebraska, are appellees, and wherein the United States circuit court of appeals, eighth circuit, has affirmed a judgment rendered against the said George W. McClellan as executor of the last will and testament of Robert H.

McClellan, deceased, in favor of Sumner Wallace in the sum of $1163.00 and also a judgment in favor of The Union National Bank of Omaha for the sum of $3698.50; and has affirmed a judgment against the said R. L. Brownlee in favor of Sumner Wallace in the sum of $581.50 and also a judgment in favor of the Union national bank for the sum of $1849.25; and has affirmed a judgment against said Caroline Carpenter in favor of Sumner Wallace in the sum of $418.68 and also a judgment in favor of the Union national bank for the sum of $1331.46; and has affirmed a judgment against the said George Marples in favor of Sumner Wallace for the sum of $348.90 and also a judgment in favor of the Union national bank for the sum of $1109.55; and has affirmed a judgment against said J. H. Hawkins (who died pending said appeal and said action has since been revived in the names of George S. Hawkins and John A. Kitchcart as executors of the last will and testament of J. H. Hawkins) in favor of Sumner Wallace in the sum of $581.50 and also a judgment in favor of the Union national bank for the sum of $1849.25.

Now, therefore, if the said above named appellants in said cause, and each of them, shall prosecute said appeals, and each of said appeals, to effect and answer and pay all costs if they, and each of them, fail to make good their pleas, and each of their pleas, then the above obligation to be void, but otherwise to remain in full force and virtue.

Witness our hands this second day of February A. D. 1905.

GEORGE W. McCLELLAN,
As Executor of the Last Will and Testament
of Robert H. McClellan, Deceased,
R. L. BROWNLEE,
CAROLINE CARPENTER,
GEORGE MARPLES,
GEORGE S. HAWKINS AND
JOHN A. KITCHCART,
As Executors of the Last Will and Testament
of J. H. Hawkins, Deceased, Principals,
By CHAS. BATTELLE, Their Solicitor.
[SEAL.] THE UNITED STATES FIDELITY
AND GUARANTY COMPANY,
By B. L. BALDWIN,
Its Attorney in Fact, Surety.

Approved this sixth day of February, 1905.

WALTER H. SANBORN,
Presiding Judge of the United States Circuit
Court of Appeals for the Eighth Circuit.

(Endorsed:) No. 1959. In the United States circuit court of appeals, 8th circuit. The McCague Investment Co., *et al.*, appellants,

vs. Sumner Wallace, *et al.*, appellees. Appeal bond George W. McClellan, as executor, &c., *et al.* Filed Feb. 6, 1905, John D. Jordan, clerk. Chas. Battelle, Omaha, Neb., solicitor.

(Order Allowing Appeal to George W. McClellan, as Executor, &c., *et al.* in Cause No. 1959.)

And on the sixth day of February, A. D. 1905, in the record of the proceedings of said circuit court of appeals is an order allowing an appeal to George W. McClellan as executor, &c., *et al.*, in the case of McCague Investment Co., *et al.*, *vs.* Wallace, *et al.*, No. 1959, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1904.

MONDAY, February 6, 1905.

THE McCAGUE INVESTMENT COMPANY ET AL., Appellants, *vs.* SUMNER WALLACE ET AL., Appellees. } No. 1959. In Equity.

Order Allowing Appeal.

On motion of the solicitor of each of the following named appellants in the above entitled action, to-wit: George W. McClellan as executor of the last will and testament of Robert H. McClellan, deceased, R. L. Brownlee, Caroline Carpenter, George Marples, and George S. Hawkins and John A. Kitchcart as executors of the last will and testament of J. H. Hawkins, deceased, and it appearing that each of said appellants above named has filed a bond for the purpose of appealing to the Supreme Court of the United States, and that all of said bonds have been duly approved:

It is ordered in open court that an appeal to the Supreme Court of the United States from the final decree heretofore filed and entered herein be and the same is allowed said appellants and each of them, and that a certified transcript of the record, testimony, papers and proceedings herein be transmitted forthwith to the Supreme Court of the United States.

February 6, 1905.

(Citation on Appeal in Cause No. 1959.)

And on the sixteenth day of February, A. D. 1905, a citation on the appeal of George W. McClellan, as executor &c., *et al.*, was filed in the case of McCague Investment Co., *et al.*, *vs.* Wallace, *et al.*, No. 1959, the original of which, with the acceptance of service endorsed thereon, is hereto attached and herewith returned.

THE UNITED STATES OF AMERICA:

To Sumner Wallace and The Union National Bank of Omaha, Nebraska, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the city of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the U. S. circuit court of appeals for the eighth circuit wherein George W. McClellan, as executor of the last will and testament of Robert H. McClellan, deceased; R. L. Brownlee, Caroline Carpenter, George Marples, and George S. Hawkins and John A. Kitchcart, as executors of the last will and testament of J. H. Hawkins, deceased, are appellants, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Walter H. Sanborn, presiding judge of the U. S. circuit court of appeals for the eighth circuit this sixth day of February in the year of our Lord one thousand nine hundred and five.

WALTER H. SANBORN,
Presiding Judge of the U. S. Circuit Court of Appeals
for the Eighth Circuit.

OMAHA Feb'y 14, 1905.

Service accepted

HALL & McCULLOCH,
Sols. for Sumner Wallace & Un. Nat. Bk.

[Endorsed:] C. W. Battelle. No. — United States Supreme Court, George W. McClellan, executor, etc., *et al.*, appellants *vs.* Sumner Wallace, *et al.* Citation on appeal. Filed Feb. 16 1905 John D. Jordan clerk.

(Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the forogoing transcript consisting of four hundred — sixty-three pages, contains full, true and complete copies of all the pleadings, proceedings and record entries, including the opinion of the said circuit court of appeals, in certain causes, wherein Henry F. Wyman, *et al.*, are severally appellants, and Sumner Wallace, *et al.*, appellees; Peter Frenzer, *et al.*, appellants, and Sumner Wallace, *et al.*, appellees; Edgar

M. Morsman appellant, and Sumner Wallace, *et al.*, appellees; William S. Poppleton, appellant, and Sumner Wallace, *et al.*, appellees, and George W. McClellan, as executor, etc., *et al.*, appellants, and Sumner Wallace, *et al.*, appellees, as full, true and complete as the originals now remain on file and of record in my office.

I do further certify that the original citations, on each of the above named appeals to the Supreme Court of the United States, with the returns of service endorsed thereon, are hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of said circuit court of appeals, at office in the city of St. Louis, Missouri, in the eighth circuit, this twenty-fourth day of February, A. D. 1905.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals
for the Eighth Circuit.

Endorsed on cover: File No. 19,652. U. S. circuit court appeals, 8th circuit. Term No. 191. Henry F. Wyman and Morris Levy, appellants, *vs.* Sumner Wallace and Union National Bank of Omaha, Nebraska. File No. 19,653. Term No. 192. Peter Frenzer, Howard B. Smith and George G. Wallace, appellants, *vs.* Sumner Wallace *et al.* File No. 19,654. Term No. 193. Edgar M. Morsman, appellant, *vs.* Sumner Wallace *et al.* File No. 19,655. Term No. 194. William S. Poppleton, appellant, *vs.* Sumner Wallace *et al.* File No. 19,656. Term No. 195. George W. McClellan, as executor of the last will & testament of Robert H. McClellan, deceased, *et al.*, appellants, *vs.* Sumner Wallace *et al.* Filed March 13th, 1905. File Nos. 19,652–'3–'4–'5 & '6.